

EXHIBIT D

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	
)	Chapter 11
DANA CORPORATION, et al.)	
)	06-10354 (BRL)
Debtors.)	(Jointly Administered)
)	

CORRECTED

**JOINT UAW AND USW OBJECTION AND MEMORANDUM IN OPPOSITION TO
DEBTORS' MOTION TO REJECT THEIR COLLECTIVE BARGAINING
AGREEMENTS AND TO MODIFY THEIR RETIREE BENEFITS
PURSUANT TO SECTIONS 1113 AND 1114 OF THE BANKRUPTCY CODE**

[Relates to Document No. 4672]

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The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the “UAW”), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “USW”) (collectively, the “Unions”), by their undersigned counsel, submit this Joint UAW and USW Objection and Memorandum in Opposition to Debtors’ Motion to Reject Their Collective Bargaining Agreements and to Modify Their Retiree Benefits Pursuant to Sections 1113 and 1114 of the Bankruptcy Code (the “Motion”).

PRELIMINARY STATEMENT

Dana’s deeply flawed Motion is but one element of a bankruptcy case premised on the near elimination of U.S.-based unionized jobs and other restructuring initiatives aimed squarely at the Debtors’ workforce and retirees. By targeting labor cost savings of \$60-90 million, in addition to a footprint “optimization” plan that moves production out of the U.S., and by seeking the *complete elimination* of its retiree health obligations -- far beyond the cash savings Dana says it needs for the next five years -- Dana is conducting its restructuring overwhelmingly at the expense of its employees and retirees. The details of Dana’s Section 1113 and 1114 proposals reveal a broad effort to depress wage rates, cut virtually all forms of benefits and, ultimately, force employees and retirees to fund Dana’s slow but steady migration to Mexico and other low cost economies.

Moreover, Dana’s drive to reduce labor costs and eliminate retiree benefits demonstrates that Dana expects to achieve its goal through litigation, without the serious effort to reach a negotiated solution that is required by Sections 1113 and 1114. While Dana commenced its bankruptcy case nearly a year ago, it did not announce the restructuring initiatives aimed at its workforce until last fall. Proposals were not given to the Unions until late November and early December, 2006. At the same time, chronic problems with information flow have hindered the

Unions' ability to conduct the necessary due diligence. Dana has thus thwarted the most basic protections that Congress designed in Sections 1113 and 1114 in order to avoid precisely the result that Dana's Motion seeks to achieve. Dana's Motion should be denied.

STATEMENT OF FACTS

A. UAW History and UAW Representation at Dana¹

Founded in 1935, the UAW and its members have achieved many of the contract benefits that Dana has targeted with its Motion through a long history of strikes, lockouts and collective bargaining in the auto industry and elsewhere. Gains from negotiations and strikes led to guarantees of the same minimum wage for both men and women, the first employer-paid pension plan for industrial workers, the first cost-of-living allowances, landmark job and income security provisions, comprehensive training and educational programs, and supplemental unemployment benefit programs. The UAW has been active in key civil rights battles for over 50 years, including the enactment of the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act, the Civil Rights Restoration Act of 1988 and legislation banning discrimination against women, the elderly and people with disabilities. The UAW was also instrumental in passing Medicare and Medicaid, the Occupational Safety and Health Act, the Employee Retirement Income Security Act of 1974 and the Family and Medical Leave Act.

The UAW is the exclusive collective bargaining representative of approximately 5,200 employees of Dana, over one-third of Dana's total hourly U.S. workforce. These employees work in 13 different Dana facilities located in six states (Indiana, Kentucky, Michigan, Missouri, Ohio and Texas). In addition, the UAW serves as the authorized representative of over 6,800 retirees, including retirees of Dana's Lima, Ohio, and Pottstown,

¹ See Declaration of Miguel Foster in Support of the Joint UAW and USW Objection and Memorandum in Opposition to Debtors' Motion to Reject Their Collective Bargaining Agreements and to Modify Their Retiree Benefits Pursuant to Sections 1113 and 1114 of the Bankruptcy Code ("Foster Decl."), filed herewith, at ¶¶3-6.

Pennsylvania facilities, and over two dozen facilities Dana has closed or idled as part of its drive to move its work to lower cost economies in Mexico and elsewhere.

Over the past several years, the UAW has spent considerable time and effort trying to enhance Dana's competitive position. The Union undertook such initiatives and engaged the Company on these issues in an attempt to secure, on a long-term basis, jobs at particular facilities and provide some measure of employment security to our members. Such efforts have commonly taken the form of collectively bargained modifications to existing wage, benefit and job classification provisions in our labor agreements. By way of example, during collective bargaining for the parties' current Upper Sandusky, Ohio labor agreement, the UAW ultimately agreed to numerous economic concessions, including: wage freezes in 2005 and 2006; closing off participation in the defined benefit pension plan to new hires and instead placing such individuals in a less costly defined contribution/401(k) plan; and the consolidation of various job classifications. The UAW similarly agreed to close the defined benefit pension plan to new hires and instead place such employees in the defined contribution savings plan during negotiations in 2005 in connection with the Archbold, Ohio labor agreement (in addition to changes in vacation entitlements for new hires).

Similarly, the UAW has demonstrated its willingness to engage the Company on methods of addressing direct labor costs. In 2004, the Union agreed to implementation of a two-tier wage schedule at the Auburn Hills, Michigan, facility with workers hired after August 2004 being placed in a lower tier wage category. Concessions agreed to by UAW-represented Lima, Ohio and Pottstown, Pennsylvania employees during the parties' 2003 labor negotiations were more pronounced, including: no general wage increases for the duration of the agreement; increases in health care co-pays and deductibles and introduction of health care premium costs

on employees; implementation of two-tier wage structure for newly hired employees with lower wage rates; lower pension benefits; reduced health care benefits; and no eligibility for post-retirement health care benefits.

B. USW History and USW Representation at Dana²

The USW is the largest industrial union in North America, with approximately 850,000 members in nearly every sector of the economy, including steel, aluminum, mining, paper and forestry, rubber, energy, auto parts, glass, general manufacturing, and health care. The USW's predecessor organization, the Steelworkers Organizing Committee ("SWOC") was formed in 1936. From its inception, the USW has grown both by organizing throughout its original jurisdictions and as a result of mergers with other industrial unions. Most recently, in April 2005, the USW merged with the Paper, Allied Industrial, Chemical and Energy International Union ("PACE"), a merger which brought approximately 250,000 new members to the USW, including several bargaining units of Dana employees.

At Dana, the USW represents approximately 2,500 bargaining unit employees employed at Dana facilities in Indiana, Kentucky, and Ohio. In addition, the USW is the authorized representative for purposes of Section 1114 of the Bankruptcy Code of those persons receiving retiree benefits pursuant to the collective bargaining agreements between Dana and the USW. Included among the retirees that the USW represents are people who worked at facilities since closed by Dana, including a large complement of retirees from a facility in Reading, Pennsylvania.

Throughout its history in its many industries, the USW and its members have struggled and sacrificed to gain the very benefits that Dana seeks to diminish or wholly eliminate

² See Declaration of James Robinson in Support of the Joint UAW and USW Objection and Memorandum in Opposition to Debtors' Motion to Reject Their Collective Bargaining Agreements and to Modify Their Retiree Benefits Pursuant to Sections 1113 and 1114 of the Bankruptcy Code ("Robinson Decl."), filed herewith, at ¶¶3-10.

through its Motion, including defined benefit pension plans, retiree insurance programs, supplemental unemployment benefits, and wage and benefit programs that, like those gains achieved by the UAW, have enabled hourly industrial workers to participate in a prosperous economy as members of the middle class.³

The USW has also been a leader in gaining passage of such key legislation as the Occupational Health and Safety Act of 1970 (“OSHA”), 29 U.S.C. §651 *et seq.*, the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 *et seq.*, and the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §301 *et seq.*, as well as Sections 1113 and 1114 of the Bankruptcy Code.

During the past two decades, and particularly since 2000, the USW and its members in several industries, including the steel, aluminum, and mining industries, have faced enormous challenges occasioned by international trade policies, escalating health care costs, and other factors that have harmed America’s industrial sector. The USW has responded to current conditions with progressive and innovative contract initiatives that have facilitated more rational and equitable corporate reorganizations and which, at the same time, have protected the economic security of its affected members and retirees. These contract initiatives (which have been incorporated into myriad existing collective bargaining agreements) include protections associated with the sale of operations to successor employers, mandated investment in plants and equipment, restrictions on corporate expenditures unrelated to plant investment, restrictions on the contracting out of bargaining unit work to outside contractors, a limitation placed on excessive executive compensation, and profit sharing programs that allow employees and retirees

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to share in future gains. The USW has offered similar terms to Dana, but unlike many other industrial employers, Dana has refused to adopt such initiatives.

The USW is organized into 13 districts, each of which covers a geographical area. At Dana, the USW represents approximately 2,500 bargaining unit employees employed at Dana facilities in Indiana, Kentucky and Ohio. The USW is the bargaining agent of the hourly employees employed at Dana's facilities at Fort Wayne and Marion, Indiana, Caldwell, Ohio, and Henderson, Kentucky and is a party to separate collective bargaining agreements at each facility. The USW is also the bargaining agent of employees at Dana's Andrews and Mitchell, Indiana facilities, each of which is in the process of being closed.

In addition, the USW is the authorized representative in this proceeding of the bargaining unit retirees of Dana's facility at Reading, Pennsylvania, which was shut down in the 1990s.

A number of local unions from the USW have joined the Dana Unions Council ("D.U.C."). The D.U.C. is an affiliation of USW and UAW local unions that have agreed on a set of principles to protect Dana workers and retirees during the bankruptcy process and negotiations.

ARGUMENT

I. DANA'S ATTACK ON THE COLLECTIVE BARGAINING AGREEMENTS AND RETIREE BENEFITS UNDERMINES THE MOST FUNDAMENTAL PREMISES OF SECTIONS 1113 AND 1114 AND MANDATES DENIAL OF THE MOTION

As set forth below, Dana's Motion flouts the basic principles underlying Sections 1113 and 1114. Dana's Motion should be denied because it has failed to present facts that would satisfy the strongest requirements deliberately imposed by Congress for obtaining the relief it seeks.

A. Sections 1113 and 1114 Were Enacted to Protect Collective Bargaining Agreements and Retiree Health Benefits

Although the history of Sections 1113 and 1114 and their purposes are well-known to this Court, it is apparent that Dana has ignored the most basic elements of these provisions. Sections 1113 and 1114 were enacted during a time when labor agreements and federal policies promoting collective bargaining were threatened by a series of strategic bankruptcy filings aimed at organized labor and collective bargaining agreements.⁴

In enacting Section 1113 after the 1984 Supreme Court decision in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984), Congress intended to halt the use of the “bankruptcy law as an offensive weapon in labor relations.” *Adventure Res., Inc. v. Holland*, 137 F.3d 786, 797-98 (4th Cir. 1998) (quoting *In re Roth American, Inc.*, 975 F.2d 949, 956 (3d Cir. 1992)); see generally *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of Am.*, 791 F.2d 1074, 1081-83, 1089 (3d Cir. 1986) (detailing legislative history).

Congress accomplished its objective of restoring the balance in collective bargaining in bankruptcy by: (1) providing that collective bargaining agreements are enforceable and cannot be modified absent court approval, (2) requiring that the parties engage in bargaining before the debtor may seek rejection, and (3) creating a substantive test for rejection that prohibits the debtor from overreaching in its demands and disproportionately burdening the affected employees. See 11 U.S.C. §§1113(b)(1)(A), (c), (f).

Giving effect to labor policies (and in stark contrast to the manner in which Dana has handled this process), the statute is designed to promote collective bargaining with litigation

⁴ Continental Airlines filed its first Chapter 11 petition in 1983, immediately affecting its labor agreements. Continental laid off all 12,000 employees and started operations with a reduced workforce at half of their regular pay rates. Eastern Air Lines openly threatened its workers with bankruptcy as leverage in collective bargaining negotiations. See Rosenberg, *Bankruptcy and the Collective Bargaining Agreement – A Brief Lesson in the Use of the Constitutional System of Checks and Balances*, 58 Am. Bankr. L.J. 293, 306-308 (Fall 1984).

used only as a last resort. *E.g., In re Century Brass Prods., Inc.*, 795 F.2d 265, 273 (2d Cir. 1986) (Section 1113 “encourages the collective bargaining process as a means of solving a debtor’s financial problems insofar as they affect its union employees”). *See also In re Northwest Airlines Corp.*, 346 B.R. 307, 320 (Bankr. S.D.N.Y. 2006) (Section 1113 is “aimed at facilitating consensual modifications to collective bargaining agreements”); 130 Cong. Rec. S8898 (daily ed. June 29, 1984), Collier App. p. 6-183-84 (statement of Sen. Packwood: §1113 was enacted to “stimulate collective bargaining and limit the number of cases when a judge will have to authorize the rejection of a labor contract”; requirements of §1113 “place[] the primary focus on the private collective bargaining process and not in the courts”).⁵ As summarized by the Second Circuit, the statute’s “entire thrust” is to “ensure that well-informed and good faith negotiations occur in the market place, not as part of the judicial process.” *In re Maxwell Newspapers, Inc.*, 981 F.2d 85, 90 (2d Cir. 1992).⁶

The statute was also designed to ensure that “covered employees do not bear either the entire financial burden of making the reorganization work or a disproportionate share of that burden, but only their fair and equitable share of the necessary sacrifices.” 130 Cong. Rec. H7496 (daily ed. June 29, 1984), Collier App. p. 6-141 (statement of Rep. Morrison); *see*

⁵ Because there were no committee reports associated with Section 1113, courts look to other legislative history, including legislators’ statements, for congressional intent. *See In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 990 (2d Cir. 1990); *In re Unimet Corp.*, 842 F.2d 879, 883 n.3 (6th Cir. 1988); *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of Am.*, 791 F.2d 1074, 1083 (3d Cir. 1986) (examining legislative history). The legislative history of Section 1113 is reprinted in E-1 Lawrence P. King, *et al.*, *Collier on Bankruptcy* App. Pt. 6(c) (15th ed. 2005) (hereafter, “Collier App. p. ____”).

⁶ *See also* 130 Cong. Rec. S8898 (daily ed. June 29, 1984), Collier App. p. 6-190 (comments of Senator Packwood) (Section 1113 “encourages the collective bargaining process, so basic to federal labor policy”); 130 Cong. Rec. S8900 (daily ed. June 29, 1984), Collier App. p. 6-190 (comments of Sen. Moynihan) (“This [good faith] provision . . . embodies the basic principles of collective bargaining established by Congress in the National Labor Relations Act”); 130 Cong. Rec. S8898 (daily ed. June 29, 1984), Collier App. p. 6-185 (comments of Sen. Kennedy) (the intent of the law is “to overturn the *Bildisco* decision . . . and to substitute a rule of law that encourages the parties to solve their mutual problems through the collective bargaining process”). *See also* 130 Cong. Rec. H7495 (daily ed. June 29, 1984), Collier App. p. 6-140 (statement of Rep. Morrison) (Section 1113 was enacted to “move[] us in the direction of a negotiation process rather than a litigation process to save companies that are in trouble without permitting any abuse of chapter 11”).

also 130 Cong. Rec. S8900 (daily ed. June 29, 1984), Collier App. p. 6-190 (comments of Sen. Moynihan) (provision for “necessary” modifications “is a most important one . . . for it ensures that a company’s workers will not have to bear an undue burden to keep the company solvent. The union would have to make the necessary concessions. Nothing more. Nothing less.”).

In addition, Section 1114 reflects Congress’ intent to safeguard retiree health benefits so that “the burden of turning a company around should not rest on the backs of retirees.” *In re Ionosphere Clubs, Inc.*, 134 B.R. 515, 522 (Bankr. S.D.N.Y. 1991) (quoting 134 Cong. Rec. S6823, S6825 (daily ed. May 26, 1988) (statement of Sen. Metzenbaum)). Congress acted to protect retirees because of the devastating effects of the loss of health insurance:

[c]ancellation of health insurance is a serious matter for anyone. It is especially serious for a retiree who is too young for Medicare but too old to buy affordable health coverage. While healthy retirees may find a replacement policy for a hefty monthly premium, sick retirees may be unable to find one at any price. The thought that a company could enter bankruptcy and renege on the promise of health and life insurance without a moment’s hesitation or so much as a word to the retirees was troubling to the Congress.

134 Cong. Rec. S6940, 1988 WL 1091280 (daily ed. May 27, 1988) (statement of Sen. Heinz).

The statute gives effect to this policy through features that mirror those of Section 1113. *See Ionosphere*, 134 B.R. at 519-20 (“[C]ompliance with §1114 is substantively and procedurally the same as compliance with §1113”).⁷

B. Dana’s Proposals Are Not “Necessary”

Dana bases its “necessity” argument on its goal of achieving a pre-tax operational profit margin of at least 4-6%. Motion, ¶78. But Dana has asked the Court (and the Unions) to make a significant leap by suggesting that Dana needs its Section 1113/1114 proposals to achieve these margins.

⁷ As discussed below, the Second Circuit’s interpretation of Section 1113 adhered to these basic principles.

1. Dana Has Not Made a Financial Case for the Relief it Seeks

First, as the Unions' financial advisor has observed, the measure of operating margin is not meaningful without taking into account protected capitalization and cash flows over a long projection period, as would be the case with a five-year business plan. Such projections would ordinarily be used to evaluate whether the Company will achieve such margins over the long-term. *See* Declaration of Leon Potok in Support of the Joint UAW and USW Objection and Memorandum in Opposition to Debtors' Motion to Reject Their Collective Bargaining Agreements and to Modify Their Retiree Benefits Pursuant to Sections 1113 and 1114 of the Bankruptcy Code ("Potok Decl.") at ¶20. The Unions' financial advisor cites a number of factors suggesting that Dana's performance in 2008 and beyond will improve and perhaps reach the Company's target in the absence of the Section 1113/1114 proposals. *See* Potok Decl. ¶20 (citing four factors that would be included in long-term projections). The Unions' financial advisor has concluded that, absent a long-term view of the Company's business and operations, "it is not possible to conclude that Dana *needs* the proposed concessions." *Id.* ¶22.

The Unions' financial advisor also observes Dana has made concessionary proposals for plants that, in all likelihood, are slated for closure over time, given management's "bias" in favor of low cost production overseas. Potok Decl. ¶¶15-17. Thus, rejection of collective bargaining agreements "will have little, if any, impact on long-term performance of the Debtors. In essence . . . the Company is asking for relief not to bolster long-term performance and to allow for its emergence from bankruptcy but rather it is asking that the employees of these facilities fund the costs of implementing the Company's plan to cut loose the same employees and facilities." Potok Decl. ¶18.

2. Dana's Rationale for its Proposed Wage Cuts is Methodologically Flawed

Dana seeks deep cuts in the wages of current production and support employees at five plants -- Auburn Hills, Fort Wayne, Lima, Marion and Pottstown -- and also seeks to cut the pay of the skilled workers at those plants. *See* Bueter Decl. ¶¶17, 20-21. In addition, it proposes paying new hires a starting wage of \$11.05 per hour, pay that would increase to \$13 only after three full years of employment. Bueter Decl. ¶22 & Exh. B. The Company claims it needs these new low wage rates to “bring Dana’s hourly wage costs into alignment with the costs of its competitors.” Motion at 23; *see also* Bueter Decl. ¶17 (claiming Dana needs to reduce pay “to bring the average hourly wage cost in line with that being paid by other companies in the same industry”).

Dana, however, provides *no* evidence that the reduced wages it proposes would be in line with those of its competitors in the auto parts industry. The Company identifies by name the principal competitors of each of the five plants, *see* Wachter Decl. ¶¶55, 72, 87, 102, 114, yet provides no indication of the wages paid by these competitors. Instead, to support its claim that it currently pays above-market wages, Dana relies on the conclusion of its expert, Dr. Michael Wachter, that the pay of the workers at these five plants “is far above the compensation for comparably skilled workers across the private sector.” Bueter Decl. ¶19. But Dana does not compete for business with firms “across the private sector”; it competes with other firms in the auto parts industry.

The expert report of Dr. Paula Voos shows that, when compared to plants of comparable size in the motor vehicle parts industry, the wages Dana pays at each of the five plants are *currently* below market. *See* Voos Decl., Table 4. For example, union workers at Auburn Hills now earn an average wage of \$17.72 per hour, compared to the estimated \$20.60 per hour paid on average in similarly sized motor vehicle parts factories. *See id.*

Cutting Dana's current wages to the level the Company proposes would immediately drive the pay of union employees at these five plants to approximately 25% below market levels. *See id.* at Table 5. At the Marion, Ohio facility, for example, the average hourly wage would be \$16.24, compared to an estimated average wage of \$22.38 for similarly sized auto parts plants. *See id.* With turnover and the hiring of new workers at the Tier II rate of \$11.05 an hour, the average wage at Marion would fall still further below market levels. *See id.* at ¶32. By seeking to drive its wages so far below market, Dana is making opportunistic use of the bankruptcy laws, hoping to achieve by court decree a sizeable competitive wage advantage over its competitors.

Even the analysis of Dana's expert -- which compares the wages of Dana's employees to those of workers across the private sector economy who allegedly have similar skills -- shows that Dana's proposed wages would be below market. *See Voos Decl.* ¶9 (listing groups of employees whose pay Dana admits would be below market). In particular, the proposed \$11.05 wage for new hires is below the average private sector wage for *every* occupational category at *each* of the five plants. *See Wachter Decl.*, Tables IV.5, V.5, VI.5, VII.5. Dana's expert in fact understates how far below market levels the proposed wages would be because he looks only at national averages and ignores the fact that the five plants at issue are located in areas where wages exceed the national average. *See Voos Decl.* at 7 (Table 1); *see also Helper Decl.* ¶20.

Far from being necessary for Dana's reorganization, the below-market wages that the Company proposes would be a recipe for failure. A firm like Dana that competes against others in complex manufacturing cannot expect to succeed without being able to attract and retain a highly skilled and motivated workforce. Workers at the Ft. Wayne plant, for example,

must produce axles that have tolerances measured in the thousandth of an inch; such work requires the operators to have ample experience with the machines they set up and run and the processes they oversee. *See* Helper Decl. ¶23. Having workers who can get the job done right is critical since defects in parts can have enormous financial implications for the Company, including by hurting its ability to win new business. *See id.* ¶¶12-13.

Cutting the pay of incumbent workers to below market levels will inevitably cause Dana's quit rates to spiral even higher than they have in the last two years, *see, e.g.*, Wachter Decl., Table IV.4 (annual quit rate at Auburn Hills jumped from 7.5% in 2004 to 38% in 2006), resulting in a hemorrhaging of experienced employees with valuable knowledge of Dana's operations. And by offering starting pay well below market levels, Dana will only be able to fill the vacancies with individuals who, due to a lack of competence, skill or motivation, are unable to get better paying jobs elsewhere. *See* Voos Decl. ¶11. What Dana needs to compete is to pay a wage that attracts competent and committed employees. Paying below-market wages will be counterproductive.⁸

3. Dana's Rationale for Eliminating Retiree Health Benefits is Also Flawed

Dana's purported rationale for the total elimination of retiree health benefits is equally deficient. First and foremost, while Dana has stated an annual cash savings goal for retiree health benefits, \$100 million per year, it has overbroadly proposed the total elimination of its retiree health obligations forever. *See* Declaration of Suzanne Taranto ("Taranto Decl."), ¶20. Dana's rationale for the permanent cessation of its retiree health obligations goes far beyond any

⁸ Dana's preoccupation with global competitiveness does not extend to its Chief Executive Officer ("CEO"). According to a April 1, 2000 report by Towers Perrin, American CEOs at 365 of the largest publicly traded U.S. companies were paid 531 times what the typical hourly employee was paid, whereas in Brazil, which had the next highest paid CEOs, CEOs were paid 57 times what the typical hourly employee was paid. CEOs in Europe were paid even less. In Germany, for example, CEOs were paid only 11 times what the typical hourly employee was paid. Michael Hennigan, *Executive Pay and Inequality in the Winner-take-all Society*, Aug. 7, 2005, http://www.finfacts.com/irelandbusinessnews/publish/article_10002825.shtml (last visited Feb. 22, 2007).

short-term cash relief. Dana relies on its observation that “[m]any companies have terminated, or are in the process of terminating, their continuing obligation to provide healthcare benefits to existing retirees.” Motion, ¶57. In other words, like some other large employers, Dana would rather not provide retiree health care. But in enacting Section 1114, Congress has foreclosed mere preference as rationale for eliminating retiree health benefits.

Moreover, a large number of employers *do* provide retiree health coverage, and studies show relatively few employers eliminating health benefits for current retirees. Taranto Decl., ¶¶9, 11.⁹ And while Dana complains that its retiree health care obligations will be disproportionate to its shrinking active workforce (reductions which are part of Dana’s strategy), the Unions’ actuarial consultant points out that Dana has already achieved significant caps in its retiree health obligation through programs such as the VEBAs (which take retiree health obligations off of Dana’s balance sheet), and through other programs that cap Dana’s response to medical inflation. Indeed, a large percentage of Dana’s UAW and USW-related liability is protected against medical inflation since Dana’s liability is capped at a fixed dollar level. Moreover, the percentage of its capped liability will increase over time, compared to its uncapped liability, because the latter is associated with an aging population that is declining in both size and attendant liability. Taranto Decl., ¶7. In addition, Dana’s annual “cost” under FAS 106 currently is less than its cash outlay. *Id.* at 13.

4. Dana’s Request is Incompatible With Controlling Law

Dana’s reliance on the Second Circuit courts’ interpretation of the “necessary” standard does not support its contention that its proposals are “necessary.” In *Truck Drivers Local 807 v. Carey Transp. Inc.*, 816 F.2d 82, 89 (2d Cir. 1987), the Second Circuit rejected the

⁹ Private employers are now encouraged to continue to provide retiree health care through significant government subsidies. Taranto Decl., ¶13.

equation of “necessary” with “essential” or “bare minimum” with respect to the debtor’s “initial” proposal in light of the statute’s requirement that the debtor negotiate *beyond* its initial proposal. The *Carey* court viewed the legislative history as inconsistent with “language suggesting that a debtor must prove that its *initial* post-petition proposal contained only bare-minimum changes” and further noted that since a debtor must negotiate in good faith over its Section 1113 proposal, the *initial* proposal could not be limited to minimal changes. *Id.*

Moreover, *Carey* rejected a stricter construction of the term “necessary” for a small company needing more than “break even” finances in a reorganization far less complex than Dana’s.¹⁰ Thus, *Carey* does not support Dana’s view that its proposed modifications would meet the “necessary” requirement if they only demonstrate that the proposals increase the likelihood of a successful reorganization. (Motion, ¶37).¹¹ Indeed, interpreting “necessary” as Dana has done would render the standard no more stringent than that used to evaluate any other

¹⁰ The debtor in *Carey* was a privately held company that provided bus service between New York City and two area airports. The collective bargaining agreements sought to be rejected in *Carey* covered 115 workers represented by one local union. *In re Carey Transp., Inc.*, 50 B.R. 203, 204-05 (Bankr. S.D.N.Y. 1985). As Dana concedes, “determination of whether a proposal is necessary to the debtor’s reorganization is made on a case-by-case basis.” Motion, ¶76, citing *Carey*, 50 B.R. at 209. Thus, the differences between Dana and a small local company like *Carey* must be taken into account when those cases are cited by Dana. *See, e.g., In re Royal Composing Room, Inc.*, 62 B.R. 403, 412 (Bankr. S.D.N.Y. 1986) (specifically noting that debtor was “not a Fortune 500 company” in applying the requirements of Section 1113 to that facts of that case). *Royal Composing*, also relied upon by Dana, involved a collective bargaining agreement between a single union local and one advertising typography shop that employed 71 workers, 31 of whom were covered by the labor contract sought to be rejected. *Id.* at 405. *See also In re Mesaba Aviation, Inc.*, 341 B.R. 693, 714 n.20 (Bankr. D. Minn. 2006) (noting “universe of difference between Mesaba’s bankruptcy and *Royal* and finding debtor’s insistence on applying *de minimis* information standard “puzzling – not to mention increasingly tiresome.”)

¹¹ In a more complex case where there are many more factors to consider in gauging the prospects for reorganization, a standard closer to the *Wheeling-Pittsburgh* standard is plainly more consistent with Section 1113’s language, structure and legislative history. *See In re Pierce Terminal Warehouse, Inc.*, 133 B.R. 639, 646-47 (Bankr. N.D. Iowa 1991) (accepting Third Circuit’s strict interpretation of the “necessary” standard and pointing out flaws in Second Circuit’s position). In addition, Dana’s construction of “necessary” is contrary to the Supreme Court’s construction of parallel language in Section 362(d) of the Bankruptcy Code. *See United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375-76 (1988). There the Court construed a “necessary to an effective reorganization” standard to require that the debtor show (in the context of relief from the automatic stay) “not merely . . . that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is *essential* for an effective reorganization that is in prospect.” *Id.* (emphasis added). The same language “in one portion of a statute . . . should be deemed to have the same meaning as the same language used elsewhere.” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 260 (1993). As noted above, the issue in *Carey* was the degree of room left to bargain in a small company with a limited budget.

transaction promoted by the debtor. Sections 1113 and 1114 were designed to avoid precisely that result.

Dana also relies heavily on *In re Northwest Airlines Corp.*, 346 B.R. 307 (Bankr. S.D.N.Y. 2006). In *Northwest*, the Professional Flight Attendants Association (“PFAA”) conceded the debtor’s total dollar “ask” at trial. *Id.* at 323. Moreover, the union in that case “failed to challenge either the assumptions or the conclusions of the Debtors’ business plan.” *Id.* at 324. Here, the Unions have contested Dana’s total “ask” and there is no business plan. *See* Potok Decl. ¶20. Further, in *Northwest*, the PFAA had reached a tentative agreement with Northwest over proposed modifications, yet withdrew from the agreement after its members failed to ratify it. *Id.* at 318. In short, *Northwest* is inapposite. *In re U.S. Airways*, No. 04-13879 (Bankr. E.D. Va. Jan. 6, 2005), is similarly distinguishable from this case. There, the debtor had presented a proposal with a series of line items with corresponding values, but was open to any proposal that reached the overall amount of the “ask.” (U.S. Airways Tr. of Record at 26 [attached as App. A to Motion].) There is no such bottom-line flexibility in Dana’s rigid insistence on each of its line-by-line proposals.

Further, Dana incorrectly contends that it need not demonstrate that each proposed modification is “necessary.” (Dana Br. at 38 [citing *In re Royal Composing Room, Inc.*, 848 F.2d 345, 349 (2d Cir. 1988)].) In *Royal Composing*, the court held only that a debtor may not need to demonstrate the necessity of an element of a proposal where the union does not bargain over changing that proposal. *See Royal Composing*, 848 F.2d at 348-51 (noting that, at least where the union has refused to bargain over particular elements of the proposal, the union cannot attack any specific element in seeking to show the proposal is not necessary). *Royal Composing* does not excuse Dana from having to prove the necessity of each item in its proposal.

The Unions here are not, as in *Royal Composing*, belatedly attempting to raise a “necessity” argument over elements of the proposal the union never bargained about.¹²

Dana must therefore demonstrate that each of its proposed changes is “necessary.” See *Maxwell Newspapers*, 981 F.2d at 90 (“the employer has the burden of proving its proposals are necessary”). In order to be “necessary,” the proposal must “contain[] *only* those modifications essential for the debtor’s reorganization.” *Id.* at 91 (emphasis in original). Given the flawed methodology underlying Dana’s wage proposals and the weak rationale for its many other line items, Dana cannot meet the “necessity” requirement of Section 1113(b)(1)(A).

C. Dana Has Failed to Provide the UAW with the Relevant Information Necessary to Evaluate Its Proposals

The information requirements of Section 1113(b)(1)(A) and Section 1114(f)(1) are another means by which Congress intended to promote bargaining rather than litigation as the forum for resolution of the debtor’s financial needs. See *In re Mesaba Aviation, Inc.*, 341 B.R. at 713-14. The many information-flow difficulties plaguing the Unions’ due diligence demonstrate that Dana is simply not serious about its bargaining obligations and has turned the process in to one of litigation gamesmanship.

There have been repeated and systemic problems with information flow, notwithstanding (and even as a result of) Dana’s effort to set-up the Virtual Data Room and the volumes of data posted to the Virtual Data Room. As the Unions discovered only recently, Dana, inexplicably, provided some of the same documents produced in the Unions’ data room to the Creditors’ Committee’s in a format that was more usable and more detailed. For example,

¹² Indeed, it is difficult to see how Dana can justify many of its proposals. Some, such as the proposal to “streamline” its wage rates suggest that Dana merely seeks to eliminate advantages the union has negotiated through its agreements with Dana over the years. See e.g., Motion ¶47, see also *id.* at ¶48 (noting proposals to modify certain work rules such as imposing standardized vacation schedules and attendance bonus programs, eliminating tuition reimbursement, that Dana determined “were above the norm” and “represented a material economic cost”).

the Committee's data room received an Excel spreadsheet on employment data in which the data can be analyzed quantitatively, and can be manipulated to test alternative scenarios. The version on the Unions' data room was in PDF format, where data would have to be manually entered on a spreadsheet, and was not susceptible to the type of analysis attendant to Excel spreadsheets. Moreover, while the Committee's version contained source employment data by facility, the level of aggregation made it far less valuable to the Unions' due diligence. Although the shortcomings of the data room have been made known to Dana's counsel, the Unions were still directed to data room postings where only limited information was provided in response to specific requests, resulting in time wasted with follow-up inquiries. Potok Decl. at ¶¶25-33.

The Unions have had continued problems obtaining meaningful data responsive to their requests. For example, the UAW requested census data files on benefit plan participants. Such basic information is necessary for actuaries to calculate estimates of benefit plan funding obligations and requirements, yet the data that Dana provided to the Union in late December 2006 prohibited the actuaries from conducting a thorough analysis. Declaration of Miguel Foster ("Foster Decl.") at ¶8. Again, because most of the items contained in the Virtual Data Room were PDF files, they could not be used to test alternative scenarios. The UAW's actuaries, for example, could not perform the tasks necessary to carry out their analysis. *Id.* When, after several weeks delay, the requested data did arrive, it was incomplete, lacked necessary participant data, and contained undefined codes (such as dependent status, participant location, etc.). This required more time-wasting follow-up requests for the necessary participant information and code definitions. *Id.* Milliman, the Unions' outside actuarial consultants, also found the Virtual Data Room difficult to gather information due to the organization of the

material and the labeling of information, and difficult to use, given the data's non-machine readable format. Declaration of Suzanne Taranto ("Taranto Decl.") at ¶4.

Dana cannot credibly justify its decision to post usable data on the Creditors' Committee's website and provide less complete, less usable data to the Unions. Dana's persistent failure to supply information in usable form violates Section 1113(b)(1)(A). *See Mesaba*, 341 B.R. at 715-17, 755, 763 (denying Section 1113 motion because Debtor failed to provide its unions with a "live" copy of its financial modeling tool). As the Court in *Mesaba* noted, "large, complex" cases require "far more information" in order to satisfy the statutory requirements. *Id.* at 714. The court went on to note that, if Section 1113 is to operate as intended, a "vital" purpose of the information requirement "is to enable a union's representatives and members to subjectively attach some bedrock legitimacy to a debtor's proposal -- to convince them that the process of formulating the proposal was not arbitrary, not 'loaded' toward a particular result, not manipulated to produce an unfair allocation of burdens among the constituencies to the bankruptcy case." *Id.* at 716.

D. Dana's Proposals Are Not "Fair and Equitable"

The Second Circuit has made clear that a Section 1113 motion may only be granted upon a showing by the debtor that all constituencies have "sacrifice[d] to a similar degree." *Century Brass*, 795 F.2d at 273. *See also, id.* ("the purpose [of the "fairly and equitably" requirement] is to spread the burdens of saving the company to every constituency while ensuring that all sacrifice to a similar degree."); *In re Delta Air Lines, inc.*, 2006 WL 3771049, at *15 (noting "requirement of the governing case law that all constituencies, great and small, bear their *fair share* of the cost of reorganization."). As demonstrated above, Dana has made plain its intent to reorganize at the expense of its unionized workforce and its retiree population.

Dana's restructuring plan, while divided into separate "initiatives," targets USW and UAW plants in its footprint programs, and divestiture, in addition to labor cost cuts that would reduce pay and a wide range of benefit programs and retiree health costs cuts thus overwhelmingly burdening the hourly workforce and retirees. While Dana contends that salaried and management personnel are contributing their fair share, a very different picture has emerged over the course of this case.

Dana spent months in litigation over its effort to secure modified contracts for its senior executives. *See In re Dana Corp.*, 351 B.R. 96 (Bankr. S.D.N.Y. 2006). Indeed, the Court on its own initiative, cut back the annual compensation cap proposed for the CEO's salary, an indication that Dana is simply unwilling to seek to attain true savings from its management team.¹³ Moreover, in contrast to Dana's repeated efforts to pay incentives to management, among the many items Dana seeks to eliminate or reduce for its hourly employees are, ironically, incentive programs, such as Dana's attendance incentive bonus. The contrast could not be more stark. Nor can the fact that Dana seeks an across-the-board elimination of its retiree health obligations save Dana's Section 1114 proposal. And, as shown above, while Dana attempts to diversify its restructuring efforts with initiatives aimed at customers, SGA and other costs, there is no mistaking that this case is about the loss of U.S. jobs, the reduction of already below market wages, a comprehensive assault on a panoply of benefits providing crucial financial security for working families, such as life, disability and AD&D benefits, and its near obsession with the concept of eliminating retiree health obligations. *See Stenger Decl.*, ¶44. Dana's argument that its proposals meet the statutory "fair and equitable" test can just not be taken seriously.

¹³ Chapter 11 has become a virtual safe haven for executive pay. *See* Gretchen Morgenson, *Gee, Bankruptcy Never Looked So Good*, The New York Times, January 15, 2006, Sunday Business, p. 1. But it has been "disastrous" for workers. *See Ass'n of Flight Attendants-CWA v. Mesaba Aviation, Inc.* 350 B.R. 435, 443 (D. Minn., 2006) ("Bankruptcy law is draconian [and] . . . disastrous for labor").

E. The Unions Have Not “Rejected the Proposals Without Good Cause”

Dana contends that “the burden lies with the Unions and the Retiree Committee, as the authorized representatives, to articulate in detail their reasons for declining to accept Dana’s proposals. Motion, ¶87.¹⁴ Dana’s half-hearted contention that the Unions have not accepted their proposals recognizes that matters between the parties simply have not progressed to the point where this statutory issue is relevant. Each of the Union declarants notes that discussions and due diligence continue. *See* Foster Decl. ¶10; Robinson Decl. ¶19¹⁵; *see also* Potok Decl. ¶¶31, 33 (describing upcoming meetings with Dana). The current status is not at all surprising given the timing of the Debtors’ proposals, in late November and early December, 2006, and Dana’s revised Section 1114 proposal delivered by Dana just days before it filed its Motion. As the Unions’ financial advisor has noted, the difficulties in information flow from Dana have necessitated specific meetings at which all open information items will be reviewed. Potok Decl., ¶32.

F. The Balance of the Equities Does Not Clearly Favor Rejection

Dana cannot show that the “balance of the equities clearly favors rejection” of the Unions’ collective bargaining agreements. The Second Circuit has “glean(ed) at least six permissible [relevant] equitable considerations:

(1) the likelihood and consequences of liquidation if rejection is not permitted; (2) the likely reduction in the value of creditors’ claims if the bargaining agreement remains in force; (3) the likelihood and consequences of a strike if the bargaining agreement is voided; (4) the possibility and likely effect of any employee claims for breach of contract if rejection is approved;

¹⁴ A court may approve a Section 1113 motion “only if” the court finds that the union “refused to accept [the debtor’s Section 1113] proposal without good cause.” 11 U.S.C. §1113(c)(2). A Union would have good cause to reject a debtor’s proposals because, for example, they are neither necessary nor fair and equitable. *See In re Express Freight Lines, Inc.*, 119 B.R. 1006, 1017 (Bankr. E.D. Wis. 1990) (when “debtor’s proposal is not necessary to its reorganization and is not fair to all concerned, it follows that the union rejected the proposal with good cause”).

¹⁵ *See also id.*, ¶18 (regarding proposal tendered at January 17-19 meetings).

(5) the cost-spreading abilities of the various parties, taking into account the number of employees covered by the bargaining agreement and how various employees' wages and benefits compare to those of others in the industry; and (6) the good or bad faith of the parties in dealing with the debtor's financial dilemma.

Carey, 816 F.2d at 93.

Dana's burden of proof on the balance of the equities test is heavier than a preponderance of the evidence. *See In re K & B Mounting, Inc.*, 50 B.R. 460, 467 (Bankr. N.D. Ind. 1985).

1. The Impact of a Strike in the Event of Rejection
Would Be Devastating for All Constituencies

Dana concedes that the prospect of a strike must be addressed as part of its burden to demonstrate that a balance of the equities clearly favors rejection.¹⁶ Motion, ¶92. In *Int'l Bhd. of Teamsters v. IML Freight, Inc.*, 789 F.2d 1460, 1463 (10th Cir. 1986), the court reversed a bankruptcy court's decision granting rejection because the court failed to consider the impact of rejection of the labor agreement on the employees, in particular the likelihood of a damaging strike. *Id.* at 1463; *see also In re Pesce Baking Co.*, 43 B.R. 949, 961, 962 (Bankr. N.D. Ohio 1984) (denying rejection motion because "[c]onsidering the risk of a strike or decreased productivity, [the debtor's] projected savings [are] highly speculative"). As in any case where an employer obtains the rejection of a collective bargaining agreement, there is a high risk here that there will be work stoppages if this Court were to grant the relief that the Company seeks. Both the UAW and USW have long histories of engaging in work stoppages in their core jurisdictions to protect the livelihoods of their members and to protest employer overreaching.

¹⁶ The unions would have the right to strike in the event the court grants the Motion. *See Briggs Transp. Co. v. Int'l Bhd. of Teamsters*, 739 F.2d 341, 344 (8th Cir. 1984).

2. Dana's Proposal Would Have a Disproportionate Impact on Individual Employees and Retirees

The Court must also consider the respective cost-spreading abilities of the parties. *See Carey*, 816 F.2d at 93. The impact of the Debtor's proposals on individual employees and retirees are especially harsh. Dana's proposals to cut wages, eliminate disability insurance, and reduce health care protection erode financial security and force workers to stretch fewer dollars with less available for overprotected, catastrophic occurrences.¹⁷

The impact of Dana's proposed cuts on its retirees is particularly disproportionate to the sacrifice demanded of non-labor constituencies, as the declarations of Henry Gibson and Craig Zucker, filed herewith, attest. Both Mr. Gibson and Mr. Zucker will lose the retiree health insurance that was repeatedly promised to them when they worked at Dana. The declarations of Mr. Gibson and Mr. Zucker spell out the cost of Dana's proposals in human terms.

Mr. Zucker, who went to work at Dana right after high school, worked for the company for thirty years, and then retired due to work-induced back problems. *See Declaration of Craig Zucker In Opposition To The Debtors' Motion To Reject Their Collective Bargaining Agreements And To Modify Their Retiree Benefits Pursuant To Sections 1113 And 1114 of the Bankruptcy Code at ¶¶1-3.* Mr. Zucker is in constant pain and, still, in order to survive, is forced to work part-time as a bus driver just to make ends meet. *Id.* at ¶¶8-9. Mr. Zucker and his wife, who is disabled and who cannot work, are too young to receive Medicare and they depend on Dana's retiree health benefits to pay for their substantial medical needs. *Id.* at ¶¶11-12. The loss of these benefits will lead to financial devastation for Mr. Zucker, notwithstanding his thirty years of loyal and dedicated service to Dana.

¹⁷ Dana's proposal even extends to programs such as tuition reimbursement, which would be eliminated.

Mr. Gibson is eighty-five years old. He worked at Dana and helped build the company from the time he left the Army immediately after WWII until his retirement in 1980. Declaration Of Henry Gibson In Opposition To The Debtors' Motion To Reject Their Collective Bargaining Agreements And To Modify Their Retiree Benefits Pursuant To Sections 1113 And 1114 Of The Bankruptcy Code at ¶1. He and his wife live on Social Security and a small pension. *Id.* at ¶¶3-4 Mr. Gibson and his wife have substantial medical expenses that are not covered by Medicare, and they depend on the Dana retiree coverage to supplement their needs. *Id.* The retiree medical cuts proposed by Dana will do nothing less than deny Mr. Gibson and his wife the ability to live in peace and security in their final years.

These are among the real and human costs of Dana's proposals, and negate any argument by Dana that its proposed modifications are "clearly favored" by a balance of the equities.

3. The Unions' Potential Claims for Contract Breach Also Favor Denial of the Motion

The Court must also consider the possibility and likely effect of any employee claims for breach of contract if rejection is approved.¹⁸ Rejection will indeed permit the Unions to file damage claims for substantial sums. *See In re Moline Corp.*, 144 B.R. 75, 78 (Bankr. N.D. Ill. 1992) (as labor agreements are executory contracts, "§365 must apply to fill in the gap left by §1113"); *In re Indiana Grocery Co.*, 138 B.R. 40, 50 (Bankr. S.D. Ind. 1990); *In re Garofalo's Finer Foods, Inc.*, 117 B.R. 363, 371 (Bankr. N.D. Ill. 1990); Michael St. Patrick Baxter, *Is There a Claim for Damages from the Rejection of a Collective Bargaining Agreement Under Section 1113 of the Bankruptcy Code?*, 12 Bankr. Dev. J. 703 (1996). *See also Carey*,

¹⁸ Dana's "split of authority" on the Unions' entitlement to damages amounts to one case. Motion, at 46, n. 59 citing *In re Blue Diamond Coal Co.*, 147 B.R. 720, 728-32 (Bankr. E.D. Tenn. 1992), *aff'd*, *Southern Labor Union, Local 188 v. Blue Diamond Coal Co.*, 160 B.R. 574 (E.D. Tenn. 1993). The clear weight of authority recognizes that rejection gives rise to a damages claim.

816 F.2d at 93 (a bankruptcy court must consider “the possibility and likely effect of any employee claims for breach of contract if rejection is approved”).¹⁹ Termination of Dana’s retiree health and life insurance obligations, based on Dana’s calculation of its OPEB liability, would yield claims of approximately \$1 billion. Although the Unions have not yet estimated the potential damages associated with Dana’s rejection of their labor agreements, such damages will be considerable as well. The potential creation of substantial claims against the estate militates strongly against rejection.²⁰

In sum, Dana cannot meet any of the requirements of Sections 1113 or 1114 and the Motion must be denied. *E.g., In re Delta Airlines*, 342 B.R. 685 (Bankr. S.D.N.Y.) (denying motion where none of the requirements of Section 1113(c) were met); *In re U.S. Truck Co. Holdings, Inc.*, 165 L.R.R.M. (BNA) 2521, 2530 (Bankr. E.D. Mich. 2000) (rejection denied where debtor’s proposal failed the “necessary” and “fair and equitable” requirements and where the debtor failed to meet and confer in good faith).

II. DANA IS NOT ENTITLED TO RETROACTIVE RELIEF

Dana’s Section 1113 proposals purport to seek implementation dates of January 1, 2007 for many wage and benefit-related items. Although the Motion clearly must be denied for failure to meet any of the statute’s requirements, even if compliance had been perfect, retroactive relief cannot be granted under Sections 1113 and 1114. Both statutes require that the debtor

¹⁹ Moreover, there is no basis for limiting the Union’s claims for future lost compensation to one year under Section 502(b)(7) of the Code. That provision limits claims of “an employee for damages resulting from the termination of an employment contract.” 11 U.S.C. §502(b)(7). A rejected collective bargaining agreement is not an employment contract within the meaning of this provision. *See In re U.S. Truck Co.*, 89 B.R. 618, 627-28 (E.D. Mich. 1988).

²⁰ Since the filing of the Motion, Dana has filed its Motion Pursuant to 11 U.S.C. §363, Authorizing Debtors to Terminate Unvested Non-Pension Benefits of (i) Non-Union Retirees and (ii) Non-Union Active Employees. Dana’s notion that there is “little prospect of large damage claims arising from its proposals” where the Debtors had a pre-petition “unilateral legal right to termination” has no application to the hourly retired benefits, all of which have been collectively bargained.

adhere to all provisions of a labor agreement, and in the case of Section 1114, to timely pay retiree health benefits without modification, following the filing of a Chapter 11 case and prohibit the unilateral change in any such provision until the Debtor has complied with the provisions of the statutes. *See* 11 U.S.C. §1113(f), 11 U.S.C §1114(e).²¹ A debtor, therefore, may not obtain relief on a retroactive basis. As the court in *In re Hoffman Bros. Packing Co.*, 173 B.R. 177 (9th Cir. B.A.P. 1994) explained in the context of a motion filed under Section 1113(e),²² the plain language of Section 1113(f) prohibiting the unilateral modifications in the absence of statutory compliance compels the conclusion that no retroactive relief can be granted. *Hoffman Bros.*, 173 B.R. at 186. Rejection, if granted under either Section 1113 or Section 1114, must be prospective only. *See Peters v. Pikes Peak Musicians Ass’n*, 462 F.3d 1265, 1274 (10th Cir. 2006) (deeming labor agreement rejected when the court approved the rejection, not when the employer filed a motion seeking rejection, for purposes of calculating §507 claim); *see also In re World Sales, Inc.*, 183 B.R. 872, 878 (9th Cir. B.A.P. 1995) (stating that “a CBA may not be rejected retroactively”).

²¹ Section 1113(f) provides: “No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.” 11 U.S.C. §1113(f).

²² That section permits a debtor to obtain interim modifications to a CBA where the debtor demonstrates that such changes are “essential to the continuation of the debtor’s business” or “to avoid irreparable damage to the estate.” 11 U.S.C. §1113(e).

CONCLUSION

For the foregoing reasons, the Debtors' Motion must be denied.

Dated: February 23, 2007
New York, NY

Respectfully submitted,

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EXHIBIT E

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 In the Matter

5 of

Index No.

06-10354

6 DANA CORPORATION,

7 Debtors.

8 -----x

9 March 26, 2007

10 United States Custom House

One Bowling Green

11 New York, New York 10004

12
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14 EVIDENTIARY HEARING

15
16
17 B E F O R E:

18 HON. BURTON R. LIFLAND,

19 U.S. Bankruptcy Judge

A P P E A R A N C E S:

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1 P R O C E E D I N G S:

2 THE COURT: Good morning.

3 MR. TAMBE: Good morning, your Honor. Jay
4 Tambe from Jones Day.

5 Before we get started with the hearing, the
6 continuation of the hearing this morning on Dana's 1113,
7 1114 motion, Dana has a discovery motion that was discussed
8 briefly with the parties and counsel, and we wish to
9 present it on the record. My partner, Steven Bennett, will
10 be presenting that motion.

11 MR. BENNETT: Good morning, your Honor. We
12 had a hoped to address this as the court had indicated in
13 chambers through some negotiation we had offered to resolve
14 the matter in part by having attorney's eyes limitation on
15 the use of the materials at issues. Apparently that's been
16 rejected so we do have to go forward and address it on the
17 record, with counsel for the unions actually wants this on
18 the record.

19 The substance of it, for the record, is we
20 have a couple of experts for the unions, one Dr. Helper and
21 the other Dr. Voos. Both these experts are testifying on
22 matters that are, according to theirs depositions, exactly
23 the same issue as they addressed in the Delfi case. In
24 fact their testimony and their depositions here was the
25 very first thing they did was load up a copy of their prior

1 report in the Delfi case; make that the basis for the
2 expert reports here, and then they made some changes. And
3 therein lies the nub of the question here.

4 The substance of our request is we'd like
5 to see the depositions from Delfi. We're entitled the to
6 know the basis for their opinions in this case. Their
7 testimony immediately links the opinions in this case to
8 their opinions in the prior Delfi case. And the
9 depositions, we believe, will demonstrate the basis for the
10 opinions in Delfi and also highlight for the court
11 ultimately whether there are inconsistencies between what
12 they said was the basis for their opinion in Delfi and what
13 they say in this case.

14 It's apparent on just looking at the expert
15 reports, it's all we've got, that there's at least one
16 glaring inconsistency between what Professor Voos said in
17 the Delfi case and what she now says in this case. We
18 think there's probably more. We think we are entitled to
19 explore that. We think we can do that subject to the
20 limitations of confidentiality. We understand that the
21 union now is taking sort of the opposite is of the view of
22 confidentiality.

23 In general for these proceedings their
24 opinion is that everything should be on record, yet somehow
25 with regard to this issue they are interested in preserving

1 the confidentiality of a third party, Delfi. We think that
2 the request can be handled by simply making this as an
3 attorney's eyes only matter. That's the first point.

4 The second point is a smaller matter
5 related to one specific expert, Dr. Voos. Her testimony in
6 her deposition was that about half the work in her expert
7 report is was done by another fellow, Professor Belmen.
8 And we asked for the reliance materials by Professor
9 Belmen. In fact, Professor Voos said in her deposition
10 that she couldn't really tell what part she did and what
11 Professor Belmen did. That to us is a strong indication of
12 what does she actually know of her own expertise and what
13 she is relying on from this fellow Professor Belmen.

14 We think we are entitled to the
15 information. Her testimony was she didn't even ask
16 Professor Belmen to see if he had a set of reliance
17 materials and, of course, nothing has been produced.
18 That's our position.

19 MR. DiCHIARA: Good morning, your Honor.
20 Peter DiChiara from the law firm of Cohen, Weiss and Simon,
21 attorneys for the UAW and the USW.

22 First, your Honor, let me address the
23 deposition transcript of Dr. Helper that was taken in the
24 Delfi case. Counsel for the company says somehow we're
25 interested in confidentiality in this instance. Now he

1 seems puzzled as to why that may be. Well, the reason we
2 are interested in confidentiality regarding Professor
3 Helper's deposition is that this court issued an order.
4 It's an order that was issued in the Delfi case by Judge
5 Drain on June 12th, 2006. It's docket number 4157 in in re
6 Delfi 05-44481, and it's entitled stipulation and agreed
7 protective order governing production and use of
8 confidential and highly confidential information in
9 connection with motion for an order under Section 1113.

10 Your Honor, if I may hand a copy of the
11 statement.

12 THE COURT: I'll accept your statement.

13 MR. DiCHIARA: Your Honor, what this
14 confidentiality order does is it provides each party to the
15 Delfi case, particularly to the 1113 proceeding in the
16 Delfi case, had the opportunity to designate as
17 confidential or highly confidential material that would be
18 used or produced in connection with that 1113 proceeding.

19 Delfi designated Dr. Helper's deposition
20 transcript as highly confidential. And I have here the
21 cover pages of those -- there are actually two separate
22 days of deposition. I have the cover pages indicating that
23 they have been stamped highly confidential. I can provide
24 those to the court if the court wishes to see those, but I
25 do represent to the court that they are designated as

1 highly confidential.

2 In the deposition Dr. Helper is an
3 empirical economist who is expert in the auto parts
4 industry. She has visit the many plants, she has visited
5 the Delfi plants, she talked to the Delfi workers about
6 their pay, about the machines they used. She was asked
7 about much of this in her deposition by Delfi's lawyers and
8 she testified under oath that about these. Delfi
9 designated that transcript as highly confidential, and I
10 submit it did so precisely because it did not want that
11 information about its internal processes being disclosed to
12 a competitor like Dana.

13 This matter, in terms of complying with the
14 court's confidentiality order, cannot be resolved by an
15 attorney's eyes only agreement with Dana; we do not have
16 that liberty. There's no provision in the order that this
17 court issued in the Delfi case that permits us to disclose
18 this document designated as highly confidential outside of
19 the scope of the Delfi 1113.

20 We are not at liberty to make a deal with
21 Dana to say we will give it to you under such and such
22 circumstances, so we are precluded from disclosing it. And
23 I would submit even if this court were inclined to require
24 us to submit the it to the company, that Delfi Corporation
25 be given the opportunity to come before this court and be

1 heard and raise an objection, if they have an objection to
2 their document, a document that they deem to be highly
3 confidential, being disclosed to a competitor.

4 Separate and apart from the court order,
5 now moving beyond just the order which pertains to the Dr.
6 Helper transcript, there's no basis for requiring the union
7 to disclose the Professor Helper deposition transcript or
8 the Dr. Voos deposition transcript of their depositions in
9 the Delfi case.

10 When the company first indicated --
11 it did not initially, by the way your Honor, indicate it
12 wanted those deposition transcripts. We first heard about
13 it a few days ago. When I heard about it I sent an e-mail
14 and got on the phone with both Dr. Voos and Dr. Helper.
15 And I said point blank to them when you prepared your
16 report in this case did you go back and look at your
17 deposition transcripts from the Delfi case. And both of
18 them told me unequivocally that they did not.

19 What they said, and they testified to this
20 in their depositions in this case, was they went back and
21 looked at their expert reports in the Delfi case. We have
22 disclosed those expert reports.

23 The scope of expert discovery is set forth
24 by Federal Rules of Civil Procedure --

25 THE COURT: Does the testimony in this case

1 involve the same sort of investigative activities that they
2 engaged in in Delfi? In other words, interviewing, going
3 to its plant?

4 MR. DiCHIARA: Well, there are -- counsel
5 said they are the exact same issues.

6 THE COURT: I just asked you a question.
7 Yes, no.

8 MR. DiCHIARA: The answer is that Dr.
9 Helper did not go into Delfi's plants in this case.

10 MR. LEVINE: Dana.

11 MR. TAMBE: Dana's plants in this case,
12 sorry. She did speak to individuals who have worked in
13 Dana's plants. Dr. Voos is not an empirical economist.
14 She does all her work using, for example, Bureau of Labor
15 statistics data. She does not do the sort of empirical
16 work that Dr. Helper does.

17 Counsel said that the issues in the two
18 cases are exactly the same. There are very similar issues,
19 no doubt about it, but they are clearly not the same. They
20 are different companies, they pay different wages, their
21 1113 proposals are different, the way they structured their
22 comparisons is different, they are not identical cases.

23 Rule 26(a)(2)(b) defines the scope of
24 expert discovery. What it says in relevant part is that
25 the other party is entitled to discovery of material or

1 information that the other party considered. That's the
2 key word considered. Both Professor Voos and Professor
3 Helper did not, or neither of them considered their
4 deposition transcripts from the Delfi case.

5 Let me put this in some context. As I
6 said, we have given the company Professor Helper's and
7 Professor Voos' expert reports from the Delfi case. In
8 addition, the company propounded a document request upon
9 all of our experts, including Dr. Voos and Dr. Helper,
10 which arguably went beyond what we were required to produce
11 under Rule 26(a)(2)(b). For example, they asked for
12 e-mails between the expert and others.

13 I think a good argument could be made that
14 we were not required to disclose that. But in the spirit
15 of full disclosure, we provided the company we everything
16 they sought in their document request. We have produced,
17 from Dr. Helper and Dr. Voos, hundreds of pages of
18 documents, articles, drafts, e-mails, notes. We have given
19 them everything that they have asked for, that the experts
20 considered.

21 And not only that, your Honor, the
22 company's have taken depositions of all of our experts,
23 including Dr. Voos and Dr. Helper's. These were all day
24 affairs; these were seven or eight hour depositions.

25 The company had every opportunity to ask

1 these experts anything about their reports, in this case,
2 about the report in the Delfi case, about their thinking in
3 the Delfi case, about their theories in the Delfi case; the
4 company had full opportunity for all of that. But now they
5 want more. What they want essentially is they want the
6 work product, the thinking of Delfi's own attorneys to
7 figure out what questions Delfi's attorneys asked and what
8 answers those elicited. They are not entitled to that
9 because it's not something that our experts considered in
10 making their reports. And I would note, your Honor, to
11 even broaden the context here --

12 THE COURT: Counsel, you are yourself privy
13 to that thinking, because you you've examined those
14 transcripts.

15 MR. DiCHIARA: I have, your Honor.

16 THE COURT: So you do have an edge with
17 respect to the kinds of questions that have been asked of
18 your expert witnesses.

19 MR. DiCHIARA: Not only have I read their
20 Delfi deposition transcripts, but I've met with and spoken
21 to these experts; of course we have. They are experts
22 retained by the union, of course we have full access to
23 their thinking, that's why we have retained them to support
24 our case.

25 THE COURT: No, I'm not talking about their

1 thinking, I'm talking about the thinking as you just
2 pointed out of counsel for Delfi in the kinds of questions
3 that were being propounded to your expert.

4 MR. DiCHIARA: Yes, your Honor, that is
5 correct.

6 THE COURT: So you've been exposed to the
7 blemishes, rewards and the good kinds of questions that
8 have been used in the legal strategy of Delfi competitive
9 to Dana.

10 MR. DiCHIARA: Your Honor, that's true, but
11 whenever there is an expert there may be any number of
12 times that that expert may have been --

13 THE COURT: I'm just looking at the effort
14 here to maintain a shield and to breach the shield and
15 whether it's legitimate or not.

16 MR. DiCHIARA: Your Honor, there's no
17 shield. What we're trying to do is maintain -- we have
18 given the company everything these experts relied on.
19 We've pushed the envelope in terms of what we think they
20 were entitled to under the rule.

21 THE COURT: Do you have anything else,
22 because I'm prepared to rule.

23 MR. DiCHIARA: Yes, I do, your Honor.

24 THE COURT: Go ahead.

25 MR. DiCHIARA: Your Honor, let me also note

1 that we have received no reliance materials from, for
2 example, the company's expert witness, Dr. Wachter. We
3 have received none of his notes, none of his drafts, none
4 of his e-mails, none of the transcripts of any depositions,
5 and he's testified in many, many Section 1113 cases.

6 THE COURT: Well, the issue here is Delfi
7 vis a vis Dana.

8 MR. LEVINE: He testified in both.

9 MR. DiCHIARA: Your Honor, Professor
10 Wachter testified in the Delfi case, he put in a report
11 that was very similar to what was in the Delfi case. His
12 report in this case is very similar to what he put in in
13 the Delfi case.

14 We, properly so, are relying on his expert
15 report in that case because that's what he considered. So
16 we have not sought any similar advantage that the company
17 is seeking here.

18 Let me move to Professor Belmen. Professor
19 Belmen is someone who assisted Professor Voos in writing
20 her report. He was not retained by the unions and he will
21 not testify in this case. We have already produced to the
22 company everything that Dr. Voos relied on from Dr. Belmen.
23 He sent her drafts. To a certain extent she incorporated
24 those drafts. We have produced those drafts. He sent her
25 e-mails, we have produced those e-mails. He sent her

1 articles, we have produced those articles.

2 Dr. Belmen testified that it was Dr. Voos
3 who made the final decision based on her expertise about
4 what to incorporate in her report, and she will be on the
5 witness stand, and she will be testifying, and she will be
6 subject to cross examination.

7 What the company wants now is not just
8 everything that Dr. Voos relied on from Dr. Belmen, they
9 want stuff that Dr. Belmen created that he may not have
10 even shared with Dr. Voos. Hypothetically, Dr. Belmen had
11 an idea and put it down on a piece of paper and never
12 showed it to Dr. Voos. You are never going to hear about
13 that, because it's Dr. Voos who is our expert.

14 The company wants to see everything. Well,
15 your Honor, there's no provision in the Rules of Civil
16 Procedure for the direct discovery of an expert who is
17 neither retained by the party nor will testify, in fact I
18 looked to see if there's anything. The closest thing I
19 could find is a provision it's Rule 26(b)(4)(b). And what
20 it says is that when you have an expert that is retained
21 but will not testify, the other party can only get
22 discovery, in relevant part, under exceptional
23 circumstances, when there's no practical way for the party
24 to get at information about the subject matter that this
25 expert has.

1 Here the company, as I said, has gotten all
2 the materials from Dr. Voos had she relied on, has taken an
3 eight hour deposition of Dr. Voos, and has its own expert
4 on the exact same subject matter, Dr. Wachter. So there
5 are no exceptional circumstances. So even if Rule
6 26(b)(4)(B) were applied, there would be no direct basis
7 for the direct discovery of Dr. Belmen. But it does not
8 apply because Dr. Belmen was not retained and is not going
9 to testify.

10 Finally, my last point, I would note that
11 Dr. Walkner, in his report, indicated that he was assisted
12 by two other economists, a Dr. Bueter and Dr. Crawford, so
13 just as Dr. Bellman assisted Dr. Voos, Dr. Walkner was
14 assisted by two other economists. So to the extent we
15 should be required to provide all the materials Dr. Belmen
16 has, even if he didn't share them with Dr. Voos, the
17 company should be required to share all of the company's
18 work product, and all of the thinking, and all of the
19 notes, and all of the e-mails for those two economists that
20 helped Dr. Walkner.

21 Thank you, your Honor.

22 MR. BENNETT: I know the court indicated
23 you were prepared to rule and I don't want to belabor this.
24 But the one thing about Dr. Wachter's testimony in Delfi,
25 it is not the same thing, they did not take Dr. Wachter's

1 deposition in Delfi. It is not the same thing. Not to
2 mention in Delfi the very same counsel were involved in
3 that case. So if they had taken the deposition they would
4 have it from the Delfi case.

5 That's all that needs to be said on that
6 sort.

7 THE COURT: Thank you, gentleman.

8 What is clear is the relationship of Delfi
9 and Dana in the context of the expert reports. To some
10 extent it does appear that the Delfi reports form a
11 foundation for expert opinions in this case.

12 The purpose of expert witnesses is to give
13 the court information so the court can make a determination
14 based upon expertise that the court doesn't have that the
15 experts do that have. Those experts are tested by cross
16 examination and by prior discovery. In this case, both
17 sides indicate that some of the discovery is wanting, that
18 there's a preclusion to some extent.

19 What is the bottom line with respect to the
20 utilization of expert testimony is the weight to be given.
21 And if it turns out, for example, that these experts are
22 not fully exposed with respect to what they relied upon to
23 the other side, cross examination cannot necessarily be
24 completely probative.

25 I can't tell at this point who is correct

1 with respect to the basis for the expert witnesses, and
2 what is usually done is to go through a voir dire. I
3 imagine there was some kind of voir dire that was exercised
4 at the time the depositions were taken. There will be a
5 voir dire before each expert is admitted before this court
6 as an expert, and I'll await that voir dire to make a
7 determination as to the eligibility of the witness to
8 testify as to certain features based upon what the expert
9 has relied upon.

10 This is not Rashomon, although to listen to
11 counsel in chambers it may very well be. And I'm sure
12 everybody here knows the story of Rashomon. It is the
13 perception of an event from the eyes of one particular
14 party and the impartial, impersonal viewer sees all kinds
15 of extremes. The event in Rashomon was either a criminal
16 act or a loving act, depending on whose looking at the
17 incident in question.

18 So we'll not have a Rashomon, we will have
19 a voir dire at the time the experts intend to appear before
20 the court.

21 MR. DiCHIARA: Thank you, your Honor.

22 THE COURT: You may proceed.

23 MR. TAMBE: Your Honor, the debtors are pro
24 prepared by with the 1113, 1114 hearing.

25 As we mentioned to the parties and your

1 Honor, we will be calling a witness who testified on the
2 12th, and that's Christopher Bueter, and his testimony will
3 be very brief just to update the court on some developments
4 that have has occurred since the last hearing.

5 Mr. Jimenez will be examining Mr. Bueter.

6 C H R I S T O P H E R B U E T E R, called as a
7 witness, having been first duly sworn by the
8 Notary Public, Denise Nowak, was examined and
9 testified as follows:

10 MR. JIMENEZ: We are ready to proceed.

11 THE COURT: All right.

12 DIRECT EXAMINATION BY MR. JIMENEZ:

13 Q. Mr. Bueter, when you testified on March the
14 12th, you stated you had received a letter form both the
15 UAW and USW on March the 9th asking to meet again on March
16 the 19th. Did you meet with the two unions on March the
17 19th?

18 A. We did meet with the two unions in on March
19 19th in Detroit.

20 Q. Who you present at the meeting?

21 A. The primary participants were Wendy Fields
22 Jacobs and Miguel Foster for the UAW, and Jim Robinson and
23 his administrative assistants for the USW. There was also
24 present servicing reps from the steel worker locations at
25 Marion, Fort Wayne and Henderson, and our UAW master

1 bargaining representative.

2 Q. During the meeting did the two unions
3 respond to the 1113 proposals that you had previously
4 delivered to them?

5 A. They did, yes.

6 Q. What was their response?

7 A. They submitted a proposal for our review
8 that was identical to the proposal that the steel workers
9 issued on January 17th to us when we bargained in Toledo.
10 The only difference was that they inserted USW/UAW and
11 inserted their locations into that agreement and inserted a
12 paragraph on the partnership.

13 We had a side bar afterwards that we just
14 discussed, Mr. Foster, myself, Wendy Fields Jacobs, Jim
15 Robison, Rick Shaw and Bob Arket the vice president of
16 services where we were going once the initial proposal was
17 made. And at that time -- I'm sorry, Naraj Guanatra was
18 present as well for the USW counsel. And we talked about
19 bargaining and how bargaining was to be to proceed because
20 receiving the same proposal caused us a great deal of
21 grief. And the communication with Mr. Robinson, after a
22 lot of discussion back and forth, was that based on the
23 information they had today they were inclined to give the
24 company absolutely nothing relative to negotiations at this
25 point in time. His words, financial concessions, we are

1 not prepared to give the company any relative financial
2 concessions at this time.

3 Q. Did the proposal they delivered to you at
4 this meeting respond to any of the terms that were
5 contained in the 1113 proposal?

6 A. They did not have any responsive terms to
7 our proposal.

8 Q. What about with respect to the Section 1114
9 proposals that you had previously delivered to them, did
10 they provide any response to those proposals?

11 A. Not specifically. In general, though, Mr.
12 Robinson acknowledged that the liabilities that the company
13 had on the books for post retirement healthcare was an
14 issue that absolutely he believed unfortunately needed to
15 be addressed, and he was prepared to set up further
16 conversations on that. We are in the process of examining
17 some e-mails and setting up for some further dates for
18 discussion on that issue.

19 Q. Mr. Bueter, I've handed to you Exhibit 72?

20 A. Yes, sir.

21 Q. Do you recognize this document, sir?

22 A. This was the initial table that we
23 presented March 12th relative to the cost savings
24 associated with our proposals on 1113; and we we've added
25 one additional column for estimated savings for the five

1 plants subject to 1113.

2 Q. If you recall, during cross examination on
3 the 12th had you were asked by the unsecured creditors'
4 committee if you knew the amount of savings that were
5 associated with respect to the five plants that are still
6 part of the 1113 motion. Do you recall that line of
7 questioning, sir?

8 A. I do recall that.

9 Q. And does the total that's listed on the
10 chart here of 28 million 418 thousand 970 dollars represent
11 your estimate of the savings the company could realize with
12 respect to the five plants that are still part of the 1113
13 motion?

14 MR. LEVINE: Objection, your Honor.
15 There's no foundation for this witness to answer that
16 question.

17 MR. JIMENEZ: Your Honor, I'm glad to
18 produce a foundation for the question; that's fine.

19 Q. Mr. Bueter, the savings listed next to the
20 items the last column on the right that says estimated
21 savings for the revised plan subject to the 1113 motion?

22 A. Yes, sir.

23 Q. Did you arrive at the figures listed on
24 this chart?

25 A. I did.

1 Q. And have these figures been provided to the
2 counsel or financial advisor to the unions?

3 A. I believe they are have, but I don't have
4 any firsthand knowledge of that.

5 Q. And the 28 million 418 thousand dollars
6 number at the bottom, that's a number that you arrived at?

7 A. Yes.

8 MR. JIMENEZ: Your Honor, at this time at
9 this time I will move for the admission of Debtor's Exhibit
10 72.

11 MR. LEVINE: May I conduct voir dire, your
12 Honor?

13 THE COURT: Sure.

14 VOIR DIRE EXAMINATION BY MR. LEVINE:

15 Q. Mr. Bueter, when you say that you arrived
16 at the estimate of 28 million for the five plants, do you
17 mean that you did the mathematical calculations to come up
18 with that number, you personally?

19 A. Yes. We actually --

20 Q. Mr. Bueter, did you personally arrive at
21 that estimate? That is my question, sir.

22 A. Yes.

23 Q. And how did you do that?

24 A. We went to the cost sheets that we
25 presented to Mr. Potok on March 7th and picked the

1 applicable categories relative to these locations.

2 Q. When you say we, you did this with somebody
3 else?

4 A. No, actually we being Dana, when we
5 presented the cost sheets to Mr. Potok.

6 Q. Did you personally, not Dana, did you
7 personally --

8 MR. JIMENEZ: Your Honor --

9 THE COURT: Did you do this? Was this
10 arrived at by a work product under your supervision?

11 THE WITNESS: Yes, it was.

12 THE COURT: I'll allow it.

13 (Whereupon, Debtor's Exhibit 72 was
14 received in evidence as of this date)

15 MR. JIMENEZ: Your Honor, I have nothing
16 further for Mr. Bueter.

17 THE COURT: It's received.

18 MR. MAYER: Your Honor, Tom Mayer for the
19 creditors committee. This document --

20 THE COURT: You asked the original
21 question.

22 MR. MAYER: Yes.

23 THE COURT: Go ahead.

24 MR. MAYER: Thank you, your Honor.

25 Your Honor, we just this got this exhibit.

1 May we have five minutes, we may not need to cross, but I
2 need five minutes to talk to somebody before we do.

3 MR. LEVINE: Well, I do have cross
4 examination.

5 MR. MAYER: Do you --

6 THE COURT: He was asking for a five minute
7 recess.

8 MR. LEVINE: All right.

9 THE COURT: Yes.

10 MR. MAYER: Thank you, your Honor.

11 (Recess taken.)

12 MR. MORELAND: Your Honor, if I might, I
13 have a few questions on behalf of the committee.

14 THE COURT: Yes.

15 EXAMINATION BY MR. MORELAND:

16 Q. Tom Moreland with the creditors committee.
17 Good morning.

18 A. Good morning.

19 Q. With respect to Debtor's Exhibit 72, the
20 first savings are estimated at 28,481,970 million; is that
21 correct?

22 A. Yes, sir.

23 Q. Does that number represent anything
24 contributable to the Marion plant?

25 A. It does.

1 Q. How much of that is related to the Marion
2 facility?

3 A. Approximately 10 million dollars.

4 Q. Am I correct that the debtors have an
5 intention to close either the Marion or the Lima plants,
6 one of the two?

7 A. Yes, sir. We haven't made the decision
8 yes, but yes, one of those two.

9 Q. And am I correct that if the Marion plant
10 is closed, that closer would realize the savings that are
11 include in this 28 million?

12 A. Yes. Those savings would be captured in
13 our manufacturing footprint bucket.

14 Q. So in that event the savings attributable
15 to the 1113 relief would be 18 million?

16 A. That's correct, if Marion were selected.

17 Q. Now these members numbers relate to the
18 first year's savings?

19 A. That's correct.

20 Q. Do you have an estimate of whatever savings
21 would result from the 1113 relief after the first year?

22 A. I do not, with me.

23 Q. Is there some reason why you've been
24 unable to calculate that figure?

25 A. No. There is a pick up in subsequent

1 years, but at a descending rate based on our second tier
2 levels and some fethering in of cost of living adjustments
3 that we've proposed for the elimination, but the numbers
4 were are available I don't have them here.

5 Q. Am I correct that with the exception of the
6 Marion plant all the collective bargaining agreements for
7 the plants affected by the 1113 motion will be expiring by
8 their own terms in the year 2008?

9 A. I believe that's correct, except Marion, as
10 you indicated, yes.

11 MR. MORELAND: Thank you. No further
12 questions.

13 EXAMINATION BY MR. LEVINE:

14 Q. Mr. Bueter, I do want to walk through this
15 exhibit a little bit with you.

16 A. Okay.

17 Q. But I do also want to ask you a few
18 questions about how it was prepared.

19 A. Okay.

20 Q. You said that it was prepared at your
21 direction?

22 A. That's correct.

23 Q. Is that correct?

24 A. In response to the unsecured creditors
25 question last time we were here, which I couldn't answer.

1 Q. And the question that you couldn't answer
2 last time was how much the company was seeking from the
3 unions in connection with the 1113 proposals; is that
4 correct?

5 A. That's correct, they wanted a break out
6 from the 61.9 of the facilities that were specifically
7 subject to the 1113.

8 Q. And that's an answer that you couldn't give
9 until this weekend; is that correct?

10 A. That's correct.

11 Q. So that to the extent that there have been
12 any discussions with the unions dating back to, say,
13 October of 2006 -- November of 2006, this basic
14 information, which we call an ask in negotiations, has not
15 been a part of negotiations; is that correct?

16 A. I guess I'm not following your question.

17 Q. Have you advised the unions until this
18 weekend the amount of money that you seek from the unions
19 in connection with your 1113 proposals?

20 A. Yes.

21 Q. But you said that document -- Debtor's
22 Exhibit 72 which has been received in evidence, was not
23 prepared until this weekend; is that correct?

24 A. That's correct.

25 Q. So this information was just made available

1 this weekend and not before, correct?

2 A. No. It was provided to Mr. Potok on March
3 7th when we provided the cost sheets for each individual
4 location.

5 Q. And it is your sworn testimony that the
6 information that you provided to Mr. Potok on March 7th
7 replicates the information that is now found on Debtor's
8 Exhibit Number 72. Is that your sworn testimony, Mr.
9 Bueter?

10 A. Yes. I think the only thing that wasn't
11 available to Mr. Potok or wasn't there, was the long term
12 disability savings because that's an overall corporate
13 savings and wasn't specifically assigned to each of the
14 facilities.

15 Q. Now on the first row going horizontal, and
16 in the third column there is a figure for wage reductions
17 of 6 million 644 thousand 661 dollars is that correct?

18 A. Yes, sir.

19 Q. Now there was another document summarizing
20 the wage reductions produced earlier in the week that had a
21 different number; is that correct? Are you aware of that?

22 A. No.

23 Q. You are not aware of it?

24 A. No, I am not.

25 Q. Now in preparing the estimates that are

1 contained in the third column, what, if anything, did you
2 do, including what direction you might have given to anyone
3 at Dana to prepare this?

4 A. I went to the cost sheets for Henderson,
5 Elizabethtown, Auburn Hills, Fort Wayne and Marion, which
6 were the five plants under 1113 and pulled off, to the best
7 of my ability, those items that are identified in this
8 proposal for the line items.

9 Q. And you did that yourself?

10 A. Yes.

11 Q. Did you do that with the assistance of
12 anyone else?

13 A. Member of my department, but primarily by
14 myself.

15 Q. People who directly report to you?

16 A. That's correct.

17 Q. And were you asked to produce this document
18 in connection with the litigation, or was it for the
19 purposes of negotiation?

20 A. No, it was actually for the purposes of
21 litigation to respond to the unsecured creditors' question.

22 Q. Now, looking at the estimated savings for
23 the five plants with respect to wage reduction, we have
24 about 6 and a half million dollars and change; correct?

25 A. Yes, that's correct.

1 Q. How did you compute that number?

2 A. I simply calculated the costs per hour that
3 we were requesting from each of the locations.

4 Q. When you say costs per hour, are you
5 talking about the hourly wage rate?

6 A. Right, the dollars per hour that we were
7 requesting in reductions from Auburn Hills, Fort Wayne and
8 Marion; multiplied that by 19 hundred hours times the
9 number of employees and came up with that number.

10 Q. Now, when you say the number of employees,
11 what are you referring to?

12 A. The head count of the facility at a given
13 time, specifically at the end of year '06.

14 Q. So you are basing your estimates with
15 respect to first year savings on the head count that
16 existed at the five 1113 facilities, we'll call it that.

17 A. Yes.

18 Q. As of December of 2006?

19 A. As of December 31st or 1/1/07, yes.

20 Q. Fair enough. Now is that number the same
21 now as it was on December 31 or January 1?

22 A. I don't know the answer to that.

23 Q. Let me ask you this; isn't it fair to say
24 that at many of the facilities including 1113 and non 1113
25 facilities, that Dana has in the United States, isn't it

1 fair to say that the head count on average has been reduced
2 over the last several years?

3 A. It has been reduced.

4 Q. Let's talk about Fort Wayne.

5 A. Okay.

6 Q. How many employees worked at Fort Wayne in
7 say 2000?

8 A. Oh, probably close to 2000 employees.

9 Q. And how many employees are there now?

10 A. 405, if I recall correctly.

11 Q. And how many employees did the company
12 expect, if you know, to have at Fort Wayne a year from now?

13 A. I do not know that.

14 Q. In fact, isn't it correct that the number
15 could very well be much less?

16 A. I think that's true, yes.

17 Q. And so, taking a head count snapshot as of
18 December 31 or January 1, doesn't tell us much unless we
19 assume that the head count during the first year, which is
20 the only year you can make an estimate at the five 1113
21 facilities, will remain constant; is that fair to say?

22 MR. JIMENEZ: Your Honor, objection. I'm
23 not sure how this relates to the scope of the two matters
24 which we put up for Mr. Bueter.

25 THE COURT: I'll allow it.

1 A. No, I guess I wouldn't say it. And the
2 reason I wouldn't say that is I've presented to the Fort
3 Wayne union the opportunity to limit or eliminate the loss
4 of further head counts with concession bargaining, so that
5 being a possibility. So I think it's very fair to say that
6 we could very well remain at that head count.

7 Q. Is it your testimony to this court then
8 that the head count at the 1113 facilities is a matter for
9 negotiation?

10 A. Certainly that's an issue for negotiations.

11 Q. And that is not part of any of the 1113
12 proposals; isn't that correct?

13 A. No, sir, it is not.

14 Q. But that's something that you've discussed
15 with the Fort Wayne union, the local union I assume you are
16 talking about?

17 A. Yes, sir, I've discussed that with Fort
18 Wayne as well as Lima and Pottstown during master
19 bargaining.

20 Q. And those discussions that you
21 had with those local unions aren't included in your
22 declaration presented to this court relating to the kinds
23 of negotiations, the number of meetings that have been held
24 prior to coming to this court for the requested relief. Is
25 that fair to say?

1 A. That is fair to say.

2 Q. In fact, there's been a number of
3 conversations --

4 MR. JIMENEZ: Your Honor, objection. This
5 is argument.

6 THE COURT: Overruled.

7 Q. In fact, there have been any number of
8 conversations that you have had with UAW and/or USW
9 officials at the local and/or international level since
10 November or so that aren't included in your declaration
11 which purports to set forth the meetings that you have had
12 or the negotiations that you have had with the unions;
13 isn't that correct?

14 A. Well, there's a difference between
15 discussions and negotiations. I've had plenty of
16 discussions with my colleagues in the USW and UAW.
17 Negotiations are an entirely different matter.

18 Q. Explain to me -- sorry, are you through?

19 A. Yes.

20 Q. Explain that to me, sir, there is a
21 difference between negotiations and discussions with the
22 parties with whom you are negotiating?

23 A. Yes. Oftentimes we have discussions on a
24 daily basis about day to day issues; can you clarify this,
25 can you work through that. Negotiations are of a more

1 formal proposals, discussions trying to correct a labor
2 agreement, fix a labor agreement, change something in the
3 context of the labor agreement.

4 Q. Is it your sworn testimony that that
5 distinction --

6 THE COURT: Counsel, you could eliminate
7 the prefix. We know that he's on the stand and he's been
8 sworn. I'm aware of that and everybody else is?

9 MR. LEVINE: I understand that, your Honor.
10 I will know longer remind the witness that he's under oath,
11 and I apologize to the court for cluttering the record.

12 Q. Mr. Bueter, is it your testimony that your
13 declaration reflects all of those negotiations you've have
14 had with the UAW and/or the USW, but does not include daily
15 discussions?

16 A. I think the context of my declaration
17 discusses the communications we had on information
18 exchanges, and that is, to the best of my recollection, the
19 true and accurate record.

20 Q. Let's go back to March 19 which you did
21 testify in that.

22 A. Yes, sir.

23 Q. You talked about two different sessions.
24 You talked about a session, I believe, tell me if I'm
25 wrong, that involved a larger group?

1 A. Yes.

2 Q. And at that session there was a counter
3 proposal tendered by the USW/UAW coalition bargaining
4 group; is that fair to say?

5 A. Actually it was e-mailed to me the Friday
6 before, but yes, we were there to discuss that proposal.

7 Q. That was the purpose of the proposal?

8 A. Yes, that's correct.

9 Q. Now, were you there to discuss it or to
10 negotiate?

11 A. Well, that depends on how you looked at it.
12 Once we received the proposal we were there to discuss the
13 differences and to consider whether there were some common
14 grounds for agreement.

15 Q. Mr. Bueter, you made the distinction
16 between the negotiations and discussions for a bargainer, I
17 did not make that distinction.

18 A. That's correct.

19 Q. So I am asking you, sir, was that first
20 session a negotiating session or a discussion, as you
21 described the distinction between those two terms?

22 A. We were there to negotiate the next labor,
23 or attempt to the next labor agreement.

24 Q. And after that there was a smaller meeting;
25 is that correct?

1 A. That is correct.

2 Q. Now was that a negotiation session or
3 discussion session?

4 A. That was both. The line does not clearly
5 get drawn between discussion and negotiation. We were
6 attempting, both parties, to try to find some common ground
7 away from our constituencies so we could work through these
8 issues and try to find a labor agreement.

9 Q. Was that an off the record
10 discussion/negotiation with the people with whom you sit
11 across the table for the purpose of coming to an agreement?

12 A. I do not come to any forum, sir, and
13 discuss off the record meetings. If it is off the record,
14 it is off the record. That meeting was not conducted off
15 the record.

16 Q. Mr. Bueter, are the unions in this case to
17 assume that any discussions that they have with you for the
18 duration of this proceeding on the record discusses?

19 A. No, sir. With we clearly have identified a
20 number of meetings before this period, and I'm sure that
21 I'll conduct afterwards that I'm sure will be off the
22 record.

23 Q. And it is your testimony as you sit here
24 today that that second session, discussions/negotiating
25 session that you said you had, was not an off the record

1 discussion?

2 A. That's correct.

3 Q. And none of the negotiating sessions in
4 your declaration include any of those off the record
5 negotiations/discussions you may have had with UAW and/or
6 USW officials since October of 2006; is that correct?

7 A. As I indicated, I don't discuss or share
8 off the record meetings in a public forum.

9 Q. And you wouldn't expect your colleagues who
10 sit across the table from you to do that either, would you?

11 A. Absolutely not. If we are off the record,
12 I would not expect that.

13 MR. LEVINE: I have no further questions,
14 your Honor.

15 THE COURT: Any redirect?

16 MR. JIMENEZ: None, your Honor.

17 THE COURT: Thank you.

18 (Witness excused)

19 THE WITNESS: Thank you, your Honor.

20 MR. TAMBE: Your Honor, the debtors would
21 next call Mr. Ted Stenger.

22 If I may approach with a binder?

23 THE COURT: Yes.

24 T E D S T E N G E R, called as a witness, having
25 been first duly sworn by the Notary

1 Public, Denise Nowak, was examined and testified as
2 follows:

3 EXAMINATION BY MR. TAMBE:

4 Q. Good morning, Mr. Stenger.

5 A. Good morning, Mr. Tambe. How are you?

6 Q. Would you please introduce yourself to the
7 court?

8 A. My name is Ted Stenger I'm the chief
9 restructuring officer of the Dana companies.

10 Q. Could describe briefly, Mr. Stenger, what
11 it is that you have done as the chief restructuring officer
12 of the Dana companies the last year or so?

13 A. Certainly. I report directly to the CEO
14 Michael Burns. I'm one of the senior executives in his
15 team, and I have been charged with leading and
16 coordinating, to different degrees, the restructuring
17 initiatives that the company has in place, including
18 customers, facilities, labor and employee related, as well
19 as our restructuring in the United Kingdom, some of our
20 divestiture and acquisition activities.

21 Q. If you could give the court the benefit of
22 your experience. You had identified your prior
23 restructuring advisory retentions, please?

24 A. Yes. I've been most recently as a
25 restructuring advisor, kind of in reverse order. I was the

1 restructuring advisor on Oxford Automotive, which was an
2 automotive related Chapter 11. I was the chief
3 restructuring officer of the Flemming Companies, which was
4 a retail and wholesale distribution company. Prior to that
5 I was a member, as the treasurer of the senior management
6 team at the K-Mart companies. Prior to that I was advisor
7 restructuring advisor to the management of Fruit of the
8 Loom, also to the Leslie Faye companies and served as a
9 interim COO for American Rice Co., which is a food products
10 company.

11 Q. Approximately, for how many years have you
12 been engaged as a restructuring advisory professional?

13 A. I guess my initial assignment was in the
14 early 80s working for the loan guarantee board of the bail
15 out of Chrysler. So it has been a better part of about 25
16 years now.

17 Q. There's a witness binder before you, Mr.
18 Stenger. If you could turn to Tab 1 which is debtors'
19 Exhibit 300. And towards the end of that exhibit there's
20 an Exhibit A, the last two pages.

21 A. Give me one second, please.

22 Q. Sure.

23 A. Yes, I'm on Exhibit 300 Exhibit A in the
24 back.

25 Q. Yes. Is that a copy of your current

1 resume, sir?

2 A. Yes, it is.

3 Q. Does that accurately describe the range of
4 your professional experience?

5 A. Yes, it does.

6 Q. And does it identify your professional and
7 business affiliation, sir?

8 A. Yes, it does.

9 Q. And down at the bottom of page 1 over to
10 page 2 and page 3, does it list some of the articles and
11 speeches that you've offered?

12 A. Yes, it does.

13 Q. Now, Exhibit 1, at Tab 1, Exhibit 300.
14 Could you describe for the court what that document is; the
15 entire document behind it?

16 A. The entire document is a declaration that I
17 prepared as chief restructuring officer, and as a
18 restructuring advisor from Alix Partners, related to the
19 1113 and 1114 motions.

20 Q. And if I could turn your attention in
21 Exhibit 300 to paragraph 15?

22 A. Yes, I have paragraph 15.

23 Q. And I'll read that paragraph. "As detailed
24 below, the debtors will not be able to achieve the level of
25 improvement in their operating profit margin that is

1 necessary for them to emerge from Chapter 11 as a viable
2 and sustainable enterprise unless this court authorizes
3 them to reject their collective bargaining agreement and
4 modify their retirement and benefit obligations as set
5 forth in the debtor's proposals with the unions and retiree
6 committee."

7 Is that a summary of the opinion that you
8 reached in this case Mr. Stenger?

9 A. Yes, paragraph 15 is a summary with the
10 summary being that it would be necessary for the company to
11 have a viable and sustainable entity to reorganize to get
12 the labor related savings and retiree related savings that
13 we've put forth in our restructuring initiatives, which
14 include the union related.

15 Q. And, Mr. Stenger, the recent developments
16 that have taken place, the settlements that have been
17 reached between the debtors and retiree committee and the
18 machinists union, would those alter the summary of your
19 opinion in any way?

20 A. No, they did not. My opinion assumed that
21 we would be successful in both aspects, both with the IAM
22 and with the nonunion retirees of obtaining those benefits.

23 MR. TAMBE: At this time, your Honor, the
24 debtors would offer Mr. Stenger as an expert in structuring
25 advisory services and would tender his Exhibit 300 hundred,

1 his declaration.

2 MR. SIMON: No objection to his
3 designation.

4 THE COURT: So designated.

5 THE WITNESS: Thank you, your Honor.

6 MR. TAMBE: And the exhibit is admitted as
7 well, your Honor, Exhibit 300.

8 THE COURT: Received.

9 (Whereupon, Debtor's Exhibit 300 was
10 received in evidence as of this date)

11 BY MR. TAMBE:

12 Q. If we could talk for a while and describe
13 the nature of Dana's business, broadly speaking?

14 A. Yes. Dana is a worldwide tier one
15 automotive supplier. The business predominantly falls into
16 two groups, one that's very focused on our automotive
17 systems and automotive vehicles, which would be passenger
18 cars basically through heavy pickup trucks and SUVs, that
19 accounts for about 65 percent of companies revenues which
20 approximate for this year about 8.5 billion dollars in
21 total. The other part of the business is our heavy
22 vehicles group which is about 35 percent and really service
23 the, if you will, truck and off highway market, so
24 construction equipment mining equipment ago consult which
25 you are equipment. Those were would be the two main areas

1 that we operator in on a business in a world wide basis.

2 Q. Just to get an idea of what it is Dana
3 manufactures if you can turn to Tab 2 in your binder?

4 A. Yes.

5 Q. There are a number of exhibits behind Tab
6 2; if we could start with what's been marked as Debtor's
7 Exhibit 37, if you could describe for the court what that
8 is?

9 A. One of the segments which is in the
10 automotive systems group, it is our structured solutions
11 group which basically makes frames for pickup trucks and
12 SUV. Here's a picture of a Ford F150 series pickup truck
13 which is a major platform for us not only in our structured
14 products group but in our other business unit. And you can
15 see there the metal frame that we built in our
16 Elizabethtown facility as well as our Saint Mary's Ontario
17 facility.

18 MR. TAMBE: Your Honor, we would offer
19 Exhibit 37 into evidence.

20 MR. SIMON: No objection.

21 THE COURT: Received.

22 (Whereupon, Debtor's Exhibit 37 was
23 received in evidence as of this date)

24 BY MR. TAMBE:

25 Q. If you could turn to Exhibit 38?

1 A. Yes.

2 Q. And can you describe what's shown in
3 Exhibit 38?

4 A. Yes. 38 shows our torque products which
5 are basically crank shafts which are designed to take power
6 from the engine to the drive wheels effectively. And
7 you'll see we serve both the light duty vehicles, crossover
8 vehicles, pickup trucks like the Tacoma, all the way
9 through industrial products which might be -- which is that
10 you can actually see there's a person there, so this is
11 like 10 times taller than a person. And those would be in
12 like power plants and printing presses, large manufacturing
13 installations, and in-between is heavy duty and off highway
14 products.

15 MR. TAMBE: We would offer Exhibit 38 into
16 evidence.

17 MR. SIMON: No objection.

18 THE COURT: Received.

19 (Whereupon, Debtor's Exhibit 38 was
20 received in evidence as of this date)

21 Q. And moving on to Exhibit 39, Mr. Stenger,
22 if you could describe what is shown in Exhibit 39?

23 A. Yes. One of our other major product
24 offerings both in automotive systems as well as for
25 commercial and heavy vehicles are traction products, axles

1 and chaises. And we would make, in the first picture on
2 the upper left we would make almost that whole entire
3 product offering in terms of the gears and it's form parts.
4 Then it goes around and shows chaises where request made
5 provide not only some of the units there but would by
6 brakes and other components from other vendors fit them up.
7 This is basically ready to put into the frame and
8 effectively attach wheels to.

9 The other part would be power transfer
10 units down at the left hand bottom that we manufacture.

11 MR. TAMBE: We would offer Exhibit 39 into
12 evidence.

13 MR. SIMON: No objection.

14 THE COURT: Received.

15 (Whereupon, Debtor's Exhibit 39 was
16 received in evidence as of this date).

17 Q. If you could describe briefly, Mr. Stenger,
18 what has been the nature of the challenges facing the
19 automotive industry, especially in North America?

20 A. The automobile industry in North America,
21 as well as the tier one supplier industry, has been under
22 constant competitive pressure for the last four or five
23 years. You can see that as you look at the landscape of
24 major companies that have filed bankruptcy, you can look at
25 that when you see the kind of loss performance and market

1 shared deterioration of many of what we refer to as the OEM
2 companies here in the US. As they have lost market share,
3 pressures that's put on the supply chain have been
4 enormous.

5 At the same time, because of world markets,
6 the commodity prices for things like steel, aluminum
7 nickle, and other commodities has continued to rise, and
8 we've had an inability to pass that on to our customers,
9 who have been similarly unable to pass that on to their
10 consumers. So it is has been very competitive, and there's
11 been a lot of restructuring in Chapter 11 as well as
12 outside Chapter 11 with plant closers, facilities
13 rationalizations, and more orientation towards a global
14 supply chain as opposed to a north American supply chain.

15 Q. Now whether you work as the chief
16 restructuring officer of Dana and preparing your
17 declaration did you rely on any reports that were prepared
18 by third parties?

19 A. Yes, I did.

20 Q. And Global Insights, is that a company
21 whose information and data that you incorporated into your
22 analyses?

23 A. Yes. Global Insights is something that the
24 company uses regularly for assessing not only historic but
25 future perspectives as to industry projected volumes.

1 Q. And are you familiar with an industry
2 called The Center for Automotive Research?

3 A. Yes, I am. It's a research organization, a
4 not for profit in Ann Arbor, Michigan.

5 Q. And have you reviewed the work that had
6 been done by the CAR?

7 A. Yes, I've been several reports that have
8 been prepared by The Center for Automotive Research.

9 Q. And did you find information in those
10 reports to be relevant in your analyses?

11 A. Yes I did.

12 Q. If you could turn in the binder before you
13 in Tab 3?

14 A. Yes.

15 Q. And identify before you what that document
16 is which is Debtor's Exhibit 216?

17 A. Yes. This is a presentation that was made
18 in September of 2006 by the center for automotive research
19 that was given I think to I understand January in an
20 economic authority but it basically goes through trends in
21 automotive industry it also discusses some things similar
22 to forward G M amount and Chrysler.

23 Q. And did you rely on some of the information
24 contained in Debtors' Exhibit 216 in forming your opinions
25 in this case?

1 A. Yes, I did.

2 MR. TAMBE: Your Honor, we would offer
3 Debtor's Exhibit 216 into evidence.

4 MR. SIMON: Object to it as hearsay, your
5 Honor.

6 THE COURT: Overruled.

7 MR. SIMON: Is your Honor accepting it for
8 the truth of the matters contained?

9 THE COURT: You didn't ask me if I had
10 any --

11 MR. SIMON: I objected on hearsay, I'm
12 asking --

13 MR. TAMBE: Your Honor, my response --

14 MR. SIMON: I would object more
15 specifically, your Honor, to relying on the truth of the
16 matters asserted in the document.

17 MR. TAMBE: My response would be two fold,
18 your Honor, both under Rule 703 and Rule 803, this is
19 admissible as reliance material relied upon by the expert.

20 THE COURT: It's received. Overruled.

21 (Whereupon, Debtor's Exhibit 216 was
22 received in evidence as of this date)

23 MR. TAMBE: Thank you, your Honor.

24 BY MR. TAMBE:

25 Q. If I could turn your attention, Mr.

1 Stenger, to slide 17, page 17 in Debtor's Exhibit 216?

2 A. Yes.

3 Q. Is there information on that slide that was
4 relevant to your analysis sir?

5 A. Yes. In effect it's one of the things I
6 mention the in my declarations is that one of the things in
7 North American America is the automotive light vehicle
8 market is expected to remain basically on a -- it has been
9 flat, bouncing around in 17 million units, it is expected
10 basic to have relatively weak growth going forward, not
11 here but it's in the global insight projections so what
12 this says is the market here in northbound America will
13 continue to be basically stable, low growth and that to
14 basically build market share you are going to have to take
15 market share so that growth is Boeing going to be based on
16 market share changes.

17 Q. In terms of the mix of product, what are
18 have the trends been with respect to the change in the mix
19 of product?

20 A. Yes. This also there's a yellow band there
21 your Honor which is basically related to cross over sport
22 utility vehicles and cross over utility vehicles which are
23 effectively vehicles that are now configured based on
24 passenger car platforms and given the attributes of utility
25 vehicles or sport utility vehicles. That's becoming a

1 bigger category. It's important for Dana because we do not
2 participate as much in the crossover vehicles as we do in
3 the what would be more traditional sport utility vehicles
4 and utility vehicles.

5 For example, the frame for the Ford F150
6 that we looked at earlier is something that crossover
7 vehicles do not use since they have unibody, they do not
8 have big frames like that, so we are not able to
9 participate in that. That's become a bigger part of the
10 marketplace, taking both from passenger car volumes as well
11 as from the truck volumes. And again, we're very much more
12 heavily weighted in automotive toward truck volumes.

13 Q. If you could turn the page, Mr. Stenger, to
14 page 18?

15 A. Yes.

16 Q. Is there information to that on that page
17 relevant to your analysis?

18 A. Yes. As I said in the previous exhibit
19 which really went to sales, this really looks at what have
20 the trends been of actual production of vehicles in the US.
21 And you can see here that it is has been relatively flat in
22 the neighborhood of 12 million units and is expected to
23 remain so going forward.

24 Q. If you could move forward in Exhibit 216 to
25 page 59, it's the one that's got supplier table of pain?

1 A. Yes, sir.

2 Q. And was there information on this page
3 relevant to your analysis?

4 A. Yes, actually this I think is a very good
5 summary of a couple things I've alluded to. If you look
6 first at the new car and truck consumer price index for the
7 98 to 2 thousand period. The actual price to consumers the
8 by off the lot has gone down 3.8 percent. At the same time
9 those vehicles have better safety, better features and a
10 better value equation so that the vehicle has become better
11 and more technologically advanced at the same time it has
12 been reduced in price.

13 At the same time if you drop down, you can
14 see, your Honor would have a -- I should have pointed out,
15 but it's notable in almost all of our products we have very
16 high content of commodities like steel and specialty bar
17 products steel, alloys mixed. You can see that on cold
18 world steel during this same period of, time we've had
19 almost a 50 percent price increase, hot rolled steel again
20 almost 50 percent aluminum which is an alloy used in a
21 number of our products as well as straight up in our
22 thermal and ceiling products has gone up 67 percent.

23 You can see that for the parts industry
24 supplying to the automotive that the commodity prices of
25 which Dana ends up with almost 60 percent of its cost being

1 materials and services that are purchased from third
2 parties having up substantially in this period, which
3 indicatates that while our costs stream has gone up we have
4 not been able to, as noted in my declaration, have not been
5 able to pass those onto the OEM customers because they have
6 been unable to pass those onto the consumers.

7 Q. And if you could turn to page 64 in Exhibit
8 216?

9 A. Yes.

10 Q. And is there information on that page that
11 was relevant to your analysis?

12 A. Yes this is an interesting graph. It shows
13 the friends from 97 to 2005. I draw your attention to
14 really the yellow. In the yellow bar here is basically
15 parts that are purchased in the US market but are purchased
16 by no one US companies which would be companies like
17 Toyota, Nissan, BMW, Mercedes Benz who have located what I
18 refer to as transplant facilities here. That's what's
19 happened as since '97 to 2005 the amount of the US parts
20 market being directed by transplant customers, the non
21 traditional big three in the North America American market
22 has moved from 12 to 30 percent.

23 Now why is that important? That's
24 important because they have bought relationships with them.
25 As they have come to North America to bring suppliers from

1 their global supply chain to be here to compete with the
2 North American suppliers like Dana. Similarly, in the way
3 that Dana has moved into a global footprint so that we can
4 serve our global customers like International, Harvester,
5 Packard, Ford, Renault, Toyota and Nissan. Again, a trend
6 that has made the competitive environment here in North
7 America that much sharper.

8 For example, many of the competitors who
9 have come in a similar way that which the transplant
10 manufacturers have come and established facilities, new
11 facilities that do not have, for example, legacy costs,
12 many of them do not have -- almost all of them do not have
13 global do not have define benefit retiree programs. So
14 they are coming with a competitive advantage as they set up
15 the shop here in this North American market that
16 established players are not able to replicate, other than
17 through negotiation and structuring change that is dramatic
18 which is dramatic, which is what we have talked about here
19 in our proposals.

20 Q. Would that information as a backdrop, if
21 you could touch briefly about what has the effect be on
22 Dana's financial performance in the hat past five years
23 overall the these changes in the industry?

24 A. Dana's financial performance in North
25 America for the past five years has continued to

1 deteriorate in the five year period the losses from US
2 activities have been approximately 2 billion dollars. This
3 year the losses will approximate I think it's 443 million
4 dollars. If you back out from that this year being in
5 bankruptcy there's a lot of restructuring and other costs
6 related to that. That run rate goes from 443 to a negative
7 325.

8 So on a business, a global business, where
9 our income EBITDAR in total is going to be about 270 this
10 year for 2006, that is in spite of an operation US losing
11 basically 450 million dollars in that period.

12 Q. Mr. Stenger, you said this year a couple of
13 times. I just want the record to be clear. The US losses
14 that you were referring to, the 450 million dollar number,
15 that is for full year 2006 performance?

16 A. Yes, that would be for calendar year 2006.

17 Q. And that's a number that has been made
18 public in the most recent SEC filings?

19 A. Yes, that's in the most recently filed
20 10-K.

21 Q. You mentioned a couple of times the impact
22 of the US operations and the loss it's of the US
23 operations. Does Dana need to be competitive in the US?

24 A. Yes, I believe that for long term viability
25 Dana needs to be competitive in the US. We are a global

1 company. We have little over half of our sales here.
2 We're heavily invested in technology, in assets, in people
3 in North America. We have the our three -- three of our
4 largest customers are based in North America. Out of the
5 top eight customers or nine customers that the company has
6 consolidated I think accounts for 70 percent of the sales
7 all of those customers has significant sales in North
8 America whether they are US or Toyota or Nissan all have
9 significant operations. To be a global supplier to these
10 customers we need to have global capability and that
11 includes North America. I think typically when people are
12 talking about global we need to be in Asia we need to be in
13 China we need to be in India, we also need to be in North
14 America. We need to serve this market. The North American
15 automotive market is the largest volume market in the
16 world. It's hard to be a global world player and not
17 participate in the biggest market in the world.

18 Q. Can Dana in your opinion compete in the US
19 market with its present cost structure?

20 A. No, it did not.

21 Q. Can Dana compete the in the US market by
22 funding its US operations with profits from overseas?

23 A. Funding the US losses on a short term basis
24 during the restructuring is our strategy now. We have
25 taken on more debt, we've sold Katrog, we are repatriating

1 cash from Europe back to the US to fund a significant
2 turnaround of these US operations. Long term it is not
3 going to be possible to take the earnings made off shore
4 and redirect those to the US if the US is not fixed. Our
5 competitors are not doing that. Our competitors are in a
6 position where in each of the marketplaces they are looking
7 to reinvest and make competitive capabilities in each of
8 those markets to the extents Dana were to continue to
9 compete globally and continue to have to fund ongoing
10 losses in North America of 3 or 4 hundred million dollars
11 we would be at a distinct competitive disadvantage to the
12 other global players who did not have that kind of negative
13 drag in North America or their other operations for that
14 matter.

15 Q. Now, Mr. Stenger, you were one of the
16 principal architects of identifying and presenting the
17 restructuring initiatives that Dana has identified,
18 correct?

19 A. That's correct.

20 Q. If you could describe for the court briefly
21 the principal steps that went into that analysis into
22 identifying restructuring initiatives, if you could?

23 A. Certainly willing. It was basically a four
24 step process. The first step was looking at competitors
25 and what kind of operating financial metrics did they V

1 what did we need to be competitive. That was basically the
2 first step.

3 The second step was then to say having
4 developed a competitive set and what metrics we looked at
5 we selected one to drive our restructuring around which was
6 EBIT. We said with that range of EBIT that we would need
7 to be competitive where are we today. What's our base
8 business, and how much do we need to improve that basis
9 business through either pricing or could the restructuring
10 to get to a point where we have competitive performs?

11 Q. You said it was a four step process what
12 was the next step?

13 A. The next step was basically looking at
14 saying what areas in the company's cost structure
15 predominantly focused on North America where we have
16 uncompetitive performs where can we go to look for these
17 improvements. Those improvements at that point were a
18 range of, I believe it was about 390 to 50 will 550 million
19 of cost improvement, profit improvement that we needed to
20 find. That was in step 3 and that really then looked at
21 the areas where ultimately we have formed the restructuring
22 initiatives around customers, S SG&A facilities operate mal
23 /SAEUGS rationalization customer profitability and the
24 labor initiatives.

25 Q. And I believe you said that was the third

1 step what was the last stop step in the process?

2 A. The fourth step has been execution and we
3 have been actively involved in that that the different
4 initiatives really beginning as early as July of 2006 with
5 initiating it's first portions of our customer pricing
6 initiatives.

7 Q. If we could just step back in a little bit
8 for detail in some of these steps. First I would ask you
9 to turn to Tab 4 in your binder?

10 A. Yes.

11 Q. That's debts Exhibit 50, is the first page
12 mind behind Tab 4?

13 A. Yes, sir.

14 Q. Would you describe for the court what
15 Debtor's Exhibit 50 is?

16 A. Debtor's Exhibit 50 is basically a the
17 result of our first step, which was going through and pry
18 pairing a view of comparable companies and what their
19 performance metrics are. This was a summary of it which
20 really goes through and shows that on a five year average
21 or a six year average, which would be the far right hand
22 two columns, that over that period this competitive set had
23 average EBIT performance of 5.6 in the case of the five
24 year average, and 5.3 in the six year average. We also
25 included their EBITDA margins, which is basically about 400

1 basis points above those. So that's the competitive set
2 that we ultimately focused on to look at.

3 I would focus your Honor to look at one
4 other thing. This is the simple average of those four
5 competitors without Dana. What you can also clearly see
6 though, also at the bottom under each year column, you can
7 see the average without Dana, and immediately above that is
8 Dana's performance. Dana has under performed this average
9 from 2001 right through 2006. So we have had a cost
10 structures that has disadvantaged us relative to our
11 competitors for this entire period.

12 So that says that we need to raise the bar
13 right quite a bit we need structural change, we need
14 dramatic change if we are going to get our performance into
15 the average of the competitive set; which is where we have
16 to be almost by definition to be a viable sustainable
17 competitor had on a long term days.

18 MR. TAMBE: The debtors offer Debtor's
19 Exhibit 50 into evidence.

20 MR. SIMON: Same objection, your Honor.

21 THE COURT: Received overruled.

22 (Whereupon, Debtor's Exhibit 50 was
23 received in evidence as of this date)

24 BY MR. TAMBE:

25 Q. Now, you focused on four particular

1 competitors in Exhibit 50?

2 A. Correct.

3 Q. I believe on the briefing of this motion
4 the financial be advisor to the retiree committee suggested
5 a different set of comparables to use?

6 A. Yes, that's correct.

7 Q. And you examined the comparables he
8 suggested to us use?

9 A. Yes, that's correct.

10 Q. And if you turn to the next page behind Tab
11 4 of Debtors' Exhibit 51?

12 A. Yes.

13 Q. Could you describe for the court what
14 Debtor's Exhibit 51 yes is?

15 A. Yes, it's the declaration of Mr. O'Malley,
16 the expert from DSI working with the retiree committee. He
17 basically did a comparable analyses similarly in looking at
18 EBITDAR margins. He pulled that from the competitors that
19 had been mentioned in the SEC filings of Dana and then
20 created averages from that. It's effectively the same set
21 that Dana used on the preceding with the addition of a few
22 and the deletion of the TRW.

23 He then did calculations, also using public
24 data as we had done, of what those averages would be, and
25 that's presented here. The same results effectively, which

1 is that the Dana performance has been substantially below
2 its competitive set for the last six year. And his
3 averages are I think about 3 hundred basis points lower on
4 this schedule than mine was.

5 That is predominately due to the fact, in
6 fact, it's exclusively due to the fact that Mr. O'Malley
7 included Visteon. We did not include Visteon, and we did
8 not include it because Visteon is a poor performer. It is
9 a spin out from Ford Motor Company five or six years ago, I
10 believe. Their financial performance since the spin out
11 has been poor and it has included a large amount of support
12 from the Ford Motor Company. Similarly somewhat to the
13 Delfi spin out where Ford Motor Company retained
14 obligations to the spun out Visteon relative to labor and a
15 number of other costs.

16 So it is basically not a true competitor
17 and it clearly is a weak competitor. The last thing the
18 company wants to do is model itself after a weak performer.
19 The purpose of looking at comparables is to gather what
20 will the comparables who will be who sustainable
21 competitors be. If you take that out, these numbers
22 actually go out to be I think about one percentage point or
23 1.2 percentage points higher than the numbers that the Dana
24 count set had, if you exclude Visteon. So that the five
25 year average goes away from being 5.3 to being, I think,

1 6.5, which is almost a full percent less than the Dana
2 averages of 5.6.

3 Q. I just want to clarify a couple of things.
4 You've used 300 basis points, I just want to be clear that
5 what you are talking about is .3 percent; is that what you
6 mean?

7 A. Three hundred basis points to be would be 3
8 percent.

9 Q. Let me correct the record. The difference
10 between Mr. O'Malley's number, including Visteon, and your
11 numbers, is .3 percent or 3 percent?

12 A. Sorry, it's 30 basis points. Thank you.

13 MR. TAMBE: And we would offer Exhibit 51
14 in evidence your Honor.

15 MR. SIMON: Same objection, your Honor.

16 THE COURT: Same ruling.

17 MR. SIMON: May I have a continuing
18 objection, your Honor?

19 THE COURT: Yes, you certainly may, and a
20 continuing ruling.

21 (Whereupon, Debtor's Exhibit 51 was
22 received in evidence as of this date)

23 Q. And finally, Exhibit 52, which is the last
24 page behind Tab 4. If you could briefly describe what that
25 is.

1 A. Yes. This is a schedule that I had
2 prepared that basically compares the two schedules we've
3 just talked about, your Honor, in showing that the
4 comparable set referred to here as the Stenger comparable
5 set, but it's the Dana set versus Mr. O'Malley's, shows
6 that for the EBIT and the EBITDARs we are basically very
7 similar while having taken specifically different
8 comparable sets as kinds of a point of reference. For the
9 six year period I just had run through one of the public
10 information sources called Capital IQ that's commonly used
11 by people in doing research, basically it gives me almost
12 the top hundred international tier ones that are publicly
13 traded.

14 And the five year average from '06 to '01
15 is 6 percent EBIT for that group of almost a hundred as
16 opposed to the much smaller counts. So one of the points
17 here being to be successful in the tier one space, you need
18 to have EBIT ranges in this 5 to 6 level to be competitive
19 to the average within that group.

20 MR. SIMON: Move to strike the testimony
21 without foundation.

22 THE COURT: Overruled.

23 MR. TAMBE: We offer Debtors' Exhibit 52
24 into evidence, your Honor.

25 THE COURT: Received.

1 (Whereupon, Debtor's Exhibit 52 was
2 received in evidence as of this date).

3 Q. There's been some discussion in some of the
4 opposition papers about your use of the EBIT metric as
5 opposed to the EBITDAR metric. Does it make a difference,
6 Mr. Stenger?

7 A. Well, effectively the EBIT and EBITDAR
8 measurements, while they are defined obviously differently,
9 they are highly correlated and in our analysis EBITDAR is
10 basically EBIT and add 400 basis points, 4 percent, and the
11 numbers are almost the same year in and year out. So we
12 used EBIT was because to drive that through the Dana
13 organization in terms of where were are we going, what are
14 our targets, it's easier to work by with EBIT numbers than
15 EBITDAR, which is not as easy a construct inside the
16 corporation as EBIT.

17 Q. Let me turn your attention to Tab 5 in your
18 trial binder, it's Debtor's Exhibit 49.

19 What is Exhibit 49, Mr. Stenger?

20 A. This is a graph that I had prepared which
21 basically shows graphically what I just testified to, your
22 Honor, which is the EBIT percentages in the black, the
23 EBITDA percentages in the red, basically move in lock step
24 and that gap between the two is almost 4 percent year in
25 and year out.

1 Q. After you had identified the target range
2 of EBIT, what was your next step of restructuring
3 initiatives.

4 A. The next step was to turn that, if you
5 will, turn it into a targeted amount that we needed to
6 find.

7 Q. And I believe you testified earlier that
8 that was a targeted range initial of 390 to 550 million?

9 A. Right. And I think for ease of testifying,
10 was basically 400 to 550 million dollars, which is where we
11 were in June and July.

12 Q. Of 2006?

13 A. Of 2006, yes, sir.

14 Q. The next step you described was a process
15 that resulted in identifying particular areas for savings;
16 is that correct?

17 A. That's correct.

18 Q. If I could take you to Tab 6 in the trial
19 binder?

20 A. Yes.

21 Q. That's Debtor's Exhibit 35?

22 A. Yes, sir.

23 Q. Do you have that there.

24 A. I do.

25 Q. Do you have that Tab 6?

1 A. Yes.

2 Q. If you could briefly describe what is the
3 information contained on Tab 6? First tell me what Tab 6
4 is?

5 A. Debtors' Exhibit 35, which we titled
6 restructuring components is basically what we refer to
7 often times as a bubble chart. But it's a graphic
8 presentation of the major areas there the company moved
9 through in step three of developing where can we go for the
10 kind of significant cost savings that we're looking for to
11 drive through effectively our North American operations.

12 This presents those, if you will, often
13 referred to, your Honor, as buckets. It says a high and
14 low range that we targeted. This is the same information
15 that was released in our third quarter SEC filings for the
16 third quarter. It was developed in a highly iterative
17 process really beginning in July of 2006 and finishing up
18 in October of 2006 with these range of estimates.

19 Q. And the total range of estimate, if you
20 went around this chart and totaled up the numbers, what is
21 the total range on this chart?

22 A. If we went around and added up the bubble
23 chart. The low end would add up to 405 million and the
24 high end would add up to 540 million.

25 Q. I'd like you to explain, step by step with

1 respect to some of these components, what the thinking has
2 been in developing the ranges. Let's start with customers,
3 which is a range of 175 to 225 billion dollars, if you
4 could describe how he was that was arrived at?

5 A. Yes. The range because arrived at by
6 looking at our on a part by part basis the North American
7 products and predominantly focused on the US market. Our
8 parts, the profitability of those within each of our
9 product groups, and then arrayed that by customer to look
10 at, in effect, customer profitability by part and by
11 platform. For example, a platform may be the Ford F150
12 pickup truck what was our profitability in our structures
13 business with that particular group.

14 We did that from a very detailed cost
15 analysis that began in May which we completed in August.
16 And based on that, then looked at the overall profitability
17 of customers and developed a range of pricing asks that we
18 would make. So that was based on the actual profitability
19 of the product, and we looked at only, effectively looked
20 at only under performing ones, which was over 2 billion
21 dollars of the North American business.

22 We then developed based on the customer,
23 the product, and the strategy relative to both of those
24 what would we ask the customer for. We did that by
25 customer, by product group, and then within product group

1 by specific part and program. And that's where we came up
2 with an estimate of 175 to 225 that we thought we could
3 ultimately realize as a result of what has been a very
4 involved and detailed negotiation process with our
5 customers that began with some customers in July and
6 continues through today.

7 Q. If you could give us just a flavor of the
8 execution of this part of the restructuring initiatives in
9 terms of dealing with the customers, again without specific
10 customer names, if you could describe generally what that
11 dynamic has been?

12 A. Sure. Most of our customers have put this
13 into their product purchasing groups where they have
14 purchasing and cost experts as you can imagine. We have
15 provided them in most cases with complete transparency as
16 to our information so they can -- they have been provided
17 with the cost of the components. They are provided with
18 for the facilities that manufactured their products, what
19 is the profitability, what are fixed and variable costs,
20 what are our labor costs, what are our material costs,
21 material costs by vender and components part.

22 Most of our customers have also retained
23 advisers that they use in working with troubled companies
24 for looking at not only the overall restructuring but also
25 doing cost analysis; so that is involved, both customers

1 and at advisers making numerous trips into the field with
2 our personnel to go through a build up of what's the
3 processes and plant inspections.

4 That has then resulted in a process of,
5 depending on the customer, a very detailed bid and ask
6 process where all of the asks were made to customers, I the
7 last one I think was provided in the end of October.

8 Since that point in time these negotiations
9 have moved back and forth. Some are concluded, subject to
10 final documentation of which your Honor will see some of
11 that as it is finalized. But as noted in our 10-K, as of
12 the end of February of our range of 175 to 225, we had
13 concluded discussions on achieving about 75 million of that
14 goal of 175 to 225.

15 Q. Going back --

16 THE COURT: Were these results in a
17 particular period of time of a lock up?

18 THE WITNESS: In some instances we have
19 been negotiating for, and in some instances have achieved,
20 commitments for keeping the product for a defined number of
21 years going forward during which period of time, by way of
22 example I'll just use a three year period of time, where we
23 have pricing production through that three year period of
24 time.

25 THE COURT: All right.

1 Q. Moving on Debtor's Exhibit 35 to the next
2 item, vendors. There's no range of numbers associated with
3 that. Could you briefly describe why that's the case?

4 A. Correct. As I mentioned before, we have
5 almost I think a 60 percent, a little shy of that of our
6 cost structures for purchased products as well as services.

7 In the past several years the company has
8 centralized and really globalized its supply chain and
9 purchasing management functions. As a result of that,
10 annually and as consistent with the industry, we set
11 targets year in and year out for reduction of our purchases
12 through cost reductions through material and product
13 substitution and through working on a more partnership
14 basis with vendors.

15 So specifically we target that every year
16 in our budgets, and in most instances, for example in 2007,
17 the annual operating budget which is built up from a plant
18 by plant, we have savings target the and articulated in
19 detailed steps of about 120 million dollars from our vendor
20 base. Those savings in our plan are serving to offset for
21 planning insurances, what we expect to be approximately 140
22 million dollars of cost increases that will also move
23 through that same vendor base so that net the good work of
24 getting 120 of cost reductions is necessary to offset
25 ongoing cost increases, net for '07 will be behind about 20

1 million dollars on that process.

2 So that as a standard business practice we
3 are continually optimizing and looking to the vendor base.
4 It is not something that's a dramatic restructuring
5 initiative for us which the other items on this chart are.

6 Q. If I to could turn your attention to the
7 next item labeled footprint and has a range of 60 to 85
8 million dollars; what does that purport?

9 A. Yes. Footprint is we have looked at and
10 predominately focused on North America, Canada and Mexico.
11 What are the company's manufacturing, assembly and
12 distribution facilities, as well as administrative
13 facilities, and looking at how do we maximize our capacity
14 utilization, consolidate facilities and drive a lower cost
15 manufacturing footprint. What that means is a
16 consolidation of facilities, closure of facilities of which
17 we've announced we are or will announce, the closure of, I
18 believe nine facilities, downsizing of several other
19 facilities, with the majority of that downsizing moving
20 into a lower cost platform, which for us is our Mexico
21 operations, and to a much lesser extent some of that work
22 is being transferred and consolidated into Spicer, India.

23 Your Honor may recall I think we were here
24 in May or early June to have the approval of the company's
25 acquisition of its joint venture interest in Spicer, which

1 is a joint venture we had in Mexico. Much of this work on
2 facilities optimization is predicated on having that
3 footprint that we now have in Mexico, through Spicer as
4 well as through the Mexican operations that the company had
5 prior to that transaction.

6 So the footprint optimization is basically
7 consolidating and lowering our cost of our supply chains
8 from North America and Dan today through Mexico. And that
9 is expected which completed in note of those activities
10 would be completed by the year 2010 that would have annual
11 savings of that from of 60 to 85 million dollars.

12 Q. So the savings shown here, the footprint
13 savings of 60 to 85 million dollars?

14 A. Yes.

15 Q. It gives a time period, again, of what
16 period of time those are expected to be achieved?

17 A. The full run rate should be achieved by
18 2010. Some of those, as we mentioned earlier, execution of
19 activities has already been initiated, and in some cases in
20 the facilities the footprint optimization that has occurred
21 with, for example, Charlotte and Renton, two of the
22 facilities have been consolidated into our facility in
23 Louisville, and we've initiated and started some of the
24 other closures and rationalizations as well.

25 Q. And maybe you already testified to this,

1 but the savings ground pin over time, is that what your
2 analysis shows with respect to this item?

3 A. Yes, I'm sorry. What happens is initially
4 that we will have a lot of actually low capital, but also a
5 lot of costs involved in transitioning facilities, closing
6 facilities, to the extent the facilities are closed, there
7 will be severance obligations that will be paid, there will
8 be other obligations that we have to our employees that we
9 are going to meet.

10 There are also then just in the cost of
11 bringing up new facilities transferring lines to other
12 facilities; all of which are period costs that are
13 negative. So that ultimately over time, as you get through
14 those, the savings will build initially it's I think less
15 than five million dollars in '07, and by 2010 we expect
16 that to be around 80 million dollars, and it ramps in
17 between SG&A items.

18 Q. And if you could continue with Debtor's 35,
19 the next item is the SG&A items.

20 A. Yes.

21 Q. Could you describe the initiative that went
22 into that components?

23 A. Yes. Basically since July what we did was
24 we benchmarked our SG&A spend against competitors.

25 Our SG&A spend has actually compared fairly

1 well, but we identified 40 to 50 million dollars as our
2 target that we needed to achieve. And that is not as much
3 focused strictly on our North American operations, but is
4 one of the initiatives that's more focused on the worldwide
5 footprint of our SG&A, because in fact our SG&A is more
6 global in nature.

7 So those are savings we developed. About
8 half of those are articulated. A number of them have been
9 implemented already.

10 Q. Moving to the next item on Debtors' 35,
11 retirees?

12 A. Yes.

13 Q. Could you describe that component of the
14 restructuring?

15 A. Yes. The retiree estimate was developed
16 based by our basically our labor team. Inside of Dana that
17 consisted of Dana experts, Towers Perrin, Jones Day, and
18 counsel by others, I believe. And what they looked at, I
19 believe, was a number of different alternatives as to how
20 we could take our retiree costs, predominately the retiree
21 costs related to our medical benefits program and how those
22 could be reduced and changed.

23 This ultimately came up with an estimate of
24 70 to 90 million which is effectively, at that point in
25 time based on estimates, is basically getting out of the

1 retiree healthcare business. At least as it would reflects
2 as to what's hitting the income statement of the
3 reorganized and restructures Dana.

4 I think as your Honor is aware, we have a
5 settlement with the retiree committee so that while Dana
6 itself will not be showing retiree expenses going forward
7 relative to those benefits, Dana is funding a VIVA with 78
8 million dollars which will be used by the retiree committee
9 to provide some level of benefits to our current retirees.

10 Q. As we move around then to the last two
11 components on this chart, Debtor's Exhibit 35.

12 A. Yes.

13 Q. Could you describe those components?

14 A. Yes we have hut two bubbles there.
15 Initially though we had effectively a process that looked
16 at all of our employees and was not quite as focused on the
17 difference between union and nonunion. But across our US
18 employees we are looking for between changes to benefits,
19 and changes to wages, as well as changes to our pension
20 plan, had targeted a range of 60 to 90 million dollars of
21 annual savings from labor benefits and the pension
22 programs. And that was also developed by our labor team.

23 MR. TAMBE: We'd offer Debtor's Exhibit 35
24 in evidence, your Honor.

25 MR. SIMON: No objection.

1 THE COURT: Received.

2 (Whereupon, Debtor's Exhibit 35 was
3 received in evidence as of this date)

4 MR. TAMBE: And if I haven't previously
5 moved Debtor's Exhibit 49 into evidence, I do so now.

6 THE COURT: That too is received.

7 (Whereupon, Debtor's Exhibit 49 was
8 received in evidence as of this date)

9 BY MR. TAMBE:

10 Q. Now, taking this analysis that yields this
11 range of 405 to 540 million dollars that we were just
12 discussing in Debtors' Exhibit 35, did you do any analysis
13 to see if Dana were able to achieve these types of price
14 improvements on savings, what the effect would be moving
15 forward?

16 A. Yes, we did, a number of times.

17 Q. I'm going to ask you to turn to Tab 7 in
18 your trial binder, which is Debtor's Exhibit 54, and it is
19 a confidential exhibit. So some of the information has
20 been publically released from this exhibit, other
21 information has not. But can you describe for the court
22 what Debtor's Exhibit 54 is?

23 THE COURT: Before we do that, can we go
24 backwards to 35 for a minute?

25 THE WITNESS: Yes.

1 THE COURT: All of your bubbles have a
2 number that go into the entire mix with the exception of
3 vendors.

4 THE WITNESS: Yes, sir.

5 THE COURT: There's a bubble above, you
6 testified that your customers have a lot of input into this
7 savings that come along, they analyze all of your costs and
8 so forth.

9 Do I assume that you do the same thing with
10 respect to your vendors?

11 THE WITNESS: Yes, we do, your Honor.

12 THE COURT: In other words, you go into
13 your own vendors and you analyze what they are charging
14 you, what their cost structures are?

15 THE WITNESS: Yes. Not with the same
16 intensity. This is a very unusual level of intensity.

17 THE COURT: I know your OEMs do it, but
18 from your vender's point of view, you are an OEM. And you
19 go through the same routine?

20 THE WITNESS: Yes. We have a supplier
21 systems used we do field visits, we work with our vendors,
22 in fact I mentioned we are looking at cost savings about of
23 120 --

24 THE COURT: This doesn't say. You have no
25 number attached to this.

1 THE WITNESS: If I were to attach a number
2 of what we will achieve in 2007, it would be about negative
3 20 million dollars. We expect to, through our programs,
4 generate savings through our vendor base of about 120
5 million.

6 At the same time we are looking at cost
7 increases either contractual or driven by changes in volume
8 or commodities of about 140 against that.

9 One of the things he I had been trying to,
10 which obviously I wasn't successful in communicating, was
11 that on an ongoing basis in this industry, it is mandatory
12 that you have aggressive programs with your vendor
13 management. We have those. We have those on a world wide
14 basis, and we articulate and task out through each of our
15 business units purchasing and vendor savings that they need
16 to garner, so that that is a standard ongoing part of our
17 business.

18 We don't, versus where we are looking at
19 here, are basically on the bubble chart what I would say is
20 more things that are restructuring oriented and dramatic
21 changes that we need to implement now. If you will, the
22 vender process is already implemented and in place.

23 THE COURT: A large part of the vendor
24 process deals with commodity purchases; is that right?

25 THE WITNESS: A large part.

1 THE COURT: And in one of your exhibits
2 your chart shows that commodity prices over a six year
3 period have gone through the roof.

4 THE WITNESS: Yes.

5 THE COURT: Do you have any control over
6 negotiating those?

7 THE WITNESS: We do. And in certain
8 instances we have longer term contracts with vendors that
9 provide for, if you will, a fixed rate on commodities. On
10 others, and it is the standard practice in the industry, is
11 surcharges where we have a contract price that is based on,
12 if you will, a set price for hot rolled bar steel for
13 example, or an alloyed steel.

14 As that moves up, our vendors surcharge us
15 and we have to pay that additional charge. And since we
16 have been successful in negotiating out of those and in
17 others, we have not been successful.

18 THE COURT: Do you engage in a hedging
19 process with respect to some of these commodities?

20 THE WITNESS: We do not engage in formal
21 hedging of our purchases or our vendors purchases for
22 commodities. We try to do that through longer terms
23 contracts with the vendor which, in effect, hush pushes the
24 hedging risk to the venders. We have been successful, in
25 particular relative to our structures products group which

1 was that big frame we see the saw the picture of. That
2 uses a large amount of flat rolled steel.

3 We are on steel purchase programs now with
4 a majority, I think in almost all of our North American
5 structured products we are on steel purchase agreements
6 with the OEMs. Networks where the OEM will provide the
7 steel effectively at a set price so we don't bear the risk
8 of the flat rolled steel price increases. We also don't
9 bear obviously the opportunity on the down side. But since
10 we don't have the capability to do the hedging we are very
11 happy to have our OEM customers take that risk.

12 THE COURT: All right.

13 BY MR. TAMBE:

14 Q. Moving on to Exhibit 54, Tab 7 of the
15 binder.

16 A. Yes.

17 Q. If you could describe briefly what that
18 analysis shows?

19 A. Yes this is an analysis that was prepared
20 by us based on two things. One is the first part of this
21 analysis, your Honor, and I'll just show is pro forma, it
22 shows high and low. The high and low referring to, in the
23 bubble chart that we went through we had different ranges
24 for each of those bubble charts on a high low. This
25 incorporates those. But it starts with what do we think

1 our, kind of our base run rate for EBITDAR will be.

2 We built that up off of the detailed
3 budgets that we did on a facility by facility basis for
4 '07, and that came up with what you'll see as, I believe
5 it's the fifth number down under the second sub total in
6 both of low and the high which is tabled the 2007 based
7 EBITDA.

8 We then took that which is our expectation
9 of what the base line this business will be able to do. We
10 then put defense against that we what we discussed earlier
11 as the high and low ranges with one exception. You'll
12 note, your Honor, that about two thirds of the way down
13 there's a negative number called pension and other. That
14 was to make an adjustment for some pension matters that we
15 didn't cover in developing the '07 EBITDA base, as well as
16 to recognize that the company has incentive plans that
17 cover management, personnel, the annual incentive plan that
18 would be an expense over time as we achieve those
19 prospective, pro forma operating results; so it would be a
20 reduction.

21 So that then takes and sub totals to
22 improvement initiatives that really add up, if you will, to
23 recognizing the one negative number and still add up to 405
24 to 540 million consistent with the bubble chart.

25 What that then shows is on the very bottom

1 of the schedule, it shows EBIT percentages based on
2 revenues as through the pro forma base case that are at
3 levels that in the low range are well below the average
4 competitive set which was 5.6, and in the high case of
5 achieving a home run, getting the high end on each one of
6 our estimates and your Honor presuming that it an all
7 happens at once so that the facility savings is 85 million
8 out the chute so to speak. Then we are within that range
9 of competitive performance metrics that we spoke about
10 earlier in various charts.

11 What that would say is that we need to
12 achieve both towards the high end on everything and we need
13 everyone to, each one of the initiatives to be successful
14 and contribute to this overall solution and turn around of
15 the company.

16 MR. TAMBE: We offer Exhibit 54 in evidence
17 if we haven't already.

18 MR. SIMON: No objection.

19 THE COURT: Received.

20 (Whereupon, Debtor's Exhibit 54 was
21 received in evidence as of this date).

22 Q. If I could turn your attention to Tab 8,
23 and that's Debtor's Exhibit 36?

24 A. Yes.

25 Q. Could you describe for the court what is

1 described, what is set forth on Debtor's Exhibit 36, which
2 is a confidential document?

3 A. Yes, I can.

4 Your Honor, the other exhibit we covered
5 Exhibit 35, the bubble chart, was basically as I said,
6 prepared on based where we were at the time we put the
7 third quarter Q together. So this is basically where we
8 are towards the end of October.

9 This chart, Exhibit 36 is now rolled
10 forward to do two things; one, it incorporates where we
11 thought we would be on the ranges based on where we were in
12 early December of 2006, and it does two things. At that
13 point in time we were putting together our 2007 budget for
14 what was ultimately the DIP budget supplement which was the
15 budget we put together, your Honor recall, we went for an
16 additional 200 million dollars of term loan, we reduced our
17 revolver by a hundred million and got amended covenants in
18 January of this year.

19 In putting together for that process, we
20 put together a new budget for '07 which looked at, and I'll
21 use if you will the upper left for our customers, as we
22 spoke before he we had a range of 175 to 225. What you
23 will see off to the left of that is an amount that we've
24 assumed we would be successful in getting during the
25 calendar year of 2007, that those will be a level of price

1 increases we are successful in negotiating and actually
2 received did during the year for shipment, so an increase
3 of pricing and revenue of that amount.

4 At that point, in December, we looked at
5 that and said if we achieve that, given that it will come
6 at different parts during the year of '07, that would
7 translate into a run rate of about -- it would transfer
8 into a run rate as noted beneath of '07 impact here, which
9 is within our range of 175 to 225.

10 Similarly, for each of the other bubbles,
11 with the exception of the union and retiree bubbles, we
12 made estimates based on where we were in December of what
13 would we really achieve as profit improvement in calendar
14 year '07 and we included it in the DIP budget supplement.
15 So as you'll see on footprint, as I noted before, it's a
16 fairly di minimis positive impact to the company in '07,
17 but by the time you get to 2010 a fairly significant and
18 dramatic increase in cost effectiveness.

19 For SG&A where we had an a range of 40 to
20 50. You'll note we have the 2007 impact. We now have a
21 view of where that run rate will be, again, it's in the
22 range of 40 to 50.

23 As of the beginning of December we had no
24 firm view on the other two boxes or buckets as you move
25 counterclockwise, and that was our retirees and our union

1 employees. So we made no assumptions as to cost savings
2 relative to either one of those in plea pairing our 2007
3 budget that we gave to our lenders.

4 We did in the last bucket which is the
5 nonunion employees, as I think Mr. Bueter may have
6 testified to already, a number of initiatives that the
7 company identified which have been implemented late in the
8 fourth quarter or in the first quarter. In some cases they
9 will be implemented during the year of '07. But we believe
10 those will have an impact that substantially realizes in
11 '07, the full year of benefits that we would expect from
12 the wages, fringes, and pension areas related to the our
13 nonunion employees.

14 MR. TAMBE: We offer Exhibit 36 in
15 evidence, your Honor.

16 MR. SIMON: No objection.

17 THE COURT: Received.

18 (Whereupon, Debtor's Exhibit 36 was
19 received in evidence as of this date).

20 Q. Did you conduct an analysis based on
21 Exhibit 36 of what Dana's expected financial analysis would
22 be if it simply achieved the 2007 impact numbers that are
23 described in Exhibit 36?

24 A. Absolutely. In fact the DIP budget
25 supplement for '07 is in fact that document.

1 Q. And did that analysis reveal Dana achieving
2 it's EBIT target based on the 2007 impact savings?

3 A. It showed substantial improvement, but we
4 are substantially below where we need to be for to be in
5 that competitive set at that average of 5.6 --

6 Q. If I could --

7 A. -- for EBIT.

8 Q. If I could turn your attention to Tab 9,
9 Debtors' Exhibit 70?

10 A. Yes.

11 Q. Could you describe what this document is?

12 A. This is a document that I had prepared in,
13 and I'll apologize in advance, there's a lot of stuff on
14 this at and it's pretty busy, but I think it's a pretty
15 important kind of perspective where we have been and where
16 we need to go.

17 But basically what this does, your Honor,
18 if you start on the left hand column, which is labeled the
19 2007 DIP budget supplement; you'll recognize the fifth line
20 down there we have the same 2007 based EBITDA. Again that
21 came up through our detailed budget facility by facility in
22 our budgeting process which was concluded in November.

23 We have then taken from basically the
24 Exhibit 36 bubble chart where we discussed, or I discussed
25 the amounts that we expect to get from each of the

1 respective initiatives to actually impact our P&L during
2 2007. I've lined all those up. At the end it says that
3 we'll have substantial improvement in our EBITDAR
4 performance over 2006 2006 EBITDAR performances is
5 approximately 267 million, and that's in our -- actually
6 I'm not sure it's in our recent K, but that's the correct
7 number.

8 At the bottom though it shows where our
9 EBIT performance is. And again, a substantial improvement
10 since EBIT this year is negative, but not even close to
11 where we need to be to be a truly competitive company,
12 therefore able to be viable and sustainable once we emerge
13 from bankruptcy.

14 Q. Now, did you update that analysis with the
15 other numbers that we saw in Exhibit 36, the run rates that
16 you would analyze or get in the longer run rates?

17 A. Yes. What we did was, your Honor, is in
18 the second column from the left is basically take our
19 annual run rates, match those back up with the, again,
20 doing a couple assumptions. One, that we hit those run
21 rates, two, we have not assumed that we have any
22 participation from the unions or from the salary retirees
23 in this, and it also presumes really what I think is a
24 third and very, very critical assumption, which is if we
25 don't get everything we need and we come out at the bottom

1 of this with basically still non competitive performance,
2 will our customers still be willing to participate with us
3 and provide us with that kind of pricing improvement?

4 My answer is no, they will not, because
5 that is -- their contribution is not going to be, if you
6 will, matched by contributions from the company, its
7 employees, and long term it will not be sustainable to
8 assume that our customers are going to bail us out while we
9 don't get the level of self help that they view us as
10 needing to get and that we have committed as an
11 organization to get. So it becomes very, very hypothetical
12 from that perspective.

13 Probably the third hypothetical here is
14 again this shows in the facilities operate ma signals if I
15 accelerated and brought forward the 210 level sale savings
16 and brought it here. Again, considering all those we are
17 still below, and well below the average of competitor
18 performers.

19 I then moved to the third column from the
20 left, which is since we had prepared our DIP budget
21 supplement, and actually quite recently, and we've
22 continued to progress forward with negotiations with our
23 customers and we have recently reached settlements with the
24 IAM on the Robinson facility, and we have also reached a
25 settlement with the nonunion retirees.

1 What we've done here is, again, same 2007
2 based EBITDAR. I have updated the customer pricing but for
3 where we now expect to be, which is a slightly different
4 estimate than you'll see in the column preceding it. We
5 have then also included, under the union labor you'll see a
6 2 million dollar number. And we have also included under,
7 put a new category there of which we've now filled in of
8 retiree benefits from terminated or settled, and that
9 really relates to the settlement. And that's the impact of
10 that settlement on our annual run rate. So those are the
11 cost savings.

12 So now we've update the for our best
13 estimates at this point. We still have not put in any
14 estimates for union labor, unless it's settled, which is
15 the IAM, and retiree benefits related to our union
16 employees. Again at the bottom we're improved, we are
17 incrementally improved over the prior column. We are still
18 well below the competitive metric that we need to have.

19 The final column, which I've labeled
20 required, takes the updated column and puts into that what
21 we have estimated as the upper end of our union request as
22 well as the upper end of the OPED request from our union
23 employees. That, when you take that through with all of
24 the other changes carried forward takes us to EBIT that is
25 now at levels that are within the range, not at the simple

1 average et, you have the five year or six year average, but
2 clearly within the range of where that competitive set is
3 moving over the five year period. That works.

4 The last column works. And what it means
5 is we need to get the participation of our unions in this
6 process or we won't have the EBIT type of capabilities that
7 we need going forward to be truly competitive and have a
8 sustainable reorganize able business that you won't have to
9 see again.

10 MR. TAMBE: Thank you, Mr. Stenger.

11 And that concludes our direct examination.

12 MR. SIMON: I'm sorry, what did you say?

13 MR. TAMBE: That concludes or direct
14 examination.

15 MR. SIMON: Did you offer the exhibit?

16 MR. TAMBE: Oh, yes, I will offer Exhibit
17 36.

18 MR. SIMON: I would like a voir dire.

19 THE COURT: Sure.

20 MR. SIMON: Thank you.

21 VOIR DIRE EXAMINATION BY MR. SIMON:

22 Q. Mr. Stenger, you said that you thought this
23 was an important document?

24 A. Yes, sir.

25 Q. Do you think of all the important documents

1 in the booklet you have before you it is the most important
2 document?

3 A. I don't know if it's the most important,
4 but I think it's a good kind of summary that concludes, so
5 from that perspective it's probably one of the more
6 important ones, yes.

7 Q. Do you know when this document was provided
8 to the union?

9 A. My -- it was probably provided --

10 Q. How about Saturday?

11 A. I was actually going to say Sunday because
12 we worked on it all through --

13 THE COURT: About midnight, so you're both
14 right.

15 A. It probably get it there a minute or two
16 before, but yes, I'm aware that we were working on it on
17 Thursday, Friday and Saturday.

18 MR. SIMON: Your Honor, giving the
19 statutory requirement that at the time of the Section 1113
20 proceeding the union be provided with the best information
21 available. Given witness' testimony regarding this
22 exhibit, we object to this exhibit and we object to the
23 testimony.

24 MR. TAMBE: May I respond, your Honor?

25 THE COURT: Sure.

1 MR. TAMBE: Sufficient information was
2 provided to the unions to evaluate the proposals. What
3 this does is update information since we made those
4 proposals. The world hasn't stood still the last three
5 months, things have been happening. And arguments are
6 going to be made well, now that X has happened you don't
7 need the relief any more, now that Y has happened we don't
8 need the relief any more. In fact, Mr. Potok says you
9 don't need any help from the unions because you are going
10 to get there on your own.

11 We are simply responding to developments
12 that have occurred since the proposal was initially made.

13 MR. SIMON: Your Honor, one additional
14 matter. March 9th was the deadline under the scheduling
15 order for exhibits to be submitted.

16 THE COURT: Thank you.

17 This is a fluid operation that's taking
18 place with respect to exchange of documents and the like.
19 The summaries I see here don't create any great surprises.
20 I'm going to allow the documents in, subject, of course, to
21 cross examination.

22 We'll take a lunch break and resume at 2
23 o'clock.

24 MR. TAMBE: Thank you, your Honor.

25 THE WITNESS: Thank you, your Honor.

(Whereupon, a recess was taken for the
purpose of luncheon at 12:55 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (Time noted: 2:00 p.m.)

3 THE COURT: Are you on first?

4 MR. MAYER: Yes, your Honor. We have, I
5 think, a very few questions. And by arrangements with the
6 other parties I thought we would take a shot.

7 THE COURT: A few is two.

8 MR. MAYER: Not much more than that, your
9 Honor. My colleague this morning, Mr. Moreland.

10 EXAMINATION BY MR. MORELAND:

11 Q. Mr. Stenger, can you put Debtor's Exhibit
12 70 in front of you, please? I think it's Tab 9.

13 A. Thank you. Yes, I'm on Debtors' 70.

14 Q. Just a point of clarification, if you look
15 at the fourth column under heading required. And you see
16 union labor, the savings projected there are 60 million.
17 Do you see that number?

18 A. Yes, I do.

19 Q. Could you relate that for us to Mr.
20 Bueter's testimony, that with respect to the 1113 motion
21 the projected savings for the five plants included in the
22 motion is 28 million, or 18 million if you exclude Marion?

23 A. Right. This savings is really not intended
24 to be looking specifically at the what I call the narrow
25 definition of where we are going to get savings which is

1 the facilities that are related to the unions that have a
2 formal 1113.

3 We have other union facilities that are not
4 included in 1113. For example, Lima and Pottstown, where
5 we have an expired agreement, so we don't have an 1113, as
6 well as, for example, Longview, where it is a union
7 facility but we haven't entered into our first contract
8 yet.

9 The 60 is really related to Mr. Bueter had,
10 I believe, two columns on his exhibit. One had the 28, one
11 had 61 million dollars. The footnote on the 61 that says
12 if you back out, I believe it was Lima at 10 million
13 dollars, that would become 51. So this 60 would correlate
14 to the 51, and on a annual run rate basis, after the first
15 year, we would anticipate that that 51, 52 would go up to
16 around 60. So that's this 60 here.

17 Q. And does that run rate basis take into
18 account the fact that you have expected closings of a
19 number of plants?

20 A. Yes. The facilities that are closing are
21 excluded from labor relate the savings. Those savings show
22 up in our facilities optimization savings numbers.

23 MR. MORELAND: Thank you.

24 THE WITNESS: You're welcome.

25 THE COURT: Any further inquiry?

1 EXAMINATION BY MR. SIMON:

2 Q. Good afternoon Mr. Stenger?

3 A. Good afternoon, Mr. Simon.

4 Q. Let me make sure I understand your very
5 last answer. Which is that savings attributable to the
6 closing ever plants is not included in labor cost savings
7 that you have outlined as part of your restructuring
8 initiatives?

9 A. That's correct.

10 Q. So that the savings you will achieve from
11 laying off terminating the employment of thousands of
12 employees and closing plants and transferring the work down
13 to Mexico and China and India, you do not consider to be
14 labor savings.

15 A. We've accounted for that as being savings
16 related to the closure of facilities and the consolidation,
17 which is 80 million dollar number that I testified to
18 earlier.

19 Q. We'll get along a lot better if you answer
20 my questions rather than saying what you want to say. So
21 you do not consider those savings to be labor savings?

22 A. Specifically answering your question, in
23 the preparation of the analytics behind the facilities
24 optimization, one of the key areas that's looked at and
25 one, in fact the driver on a net basis of savings is an

1 evaluation of labor savings not only from wage rate but
2 benefits as well as productivity between facilities that
3 are closing and facilities that the work will be
4 transferred to. So specifically we have been very focused
5 on labor savings in calculating what the facilities savings
6 are.

7 Q. How many employees are employed in plants
8 today from whom you expect to achieve the labor savings
9 that are the subject of this motion?

10 A. As I sit here, I don't know the answer to
11 that question.

12 Q. You don't know -- we're talking about five
13 plants?

14 A. The five plants that Mr. --

15 Q. What plans are we talking about?

16 A. We're talking about Henderson, Fort Wayne,
17 Auburn Hills, Elizabethtown, Kentucky.

18 Q. And you have no idea how many employees are
19 employed at those five plants that are the subject of this
20 1113?

21 A. As with we sit here, I don't know what the
22 number of total employees is.

23 Q. Do you have an order of magnitude? Are we
24 talking about a hundred, a thousand, five hundred, five
25 thousand?

1 A. Order of magnitude would be somewhere in
2 the neighborhood of 15 hundred to 2500 employees.

3 Q. Let's see if this refreshes your
4 recollection. Marion, 328, does that help?

5 A. I'm not sure where you are getting those
6 numbers from, but that's helpful to me if you are going to
7 represent that's the correct number.

8 Q. And that's a plant that may be closed?

9 A. That was Marion? Yes, Marion or Lima.

10 Q. Henderson 471. Does that sound about
11 right?

12 A. I'll take that from you, yes.

13 Q. Auburn Hills, 194. Does that sound about
14 right?

15 A. Yes.

16 Q. Fort Wayne, 405. Does that sound about
17 right?

18 A. That's what Mr. Bueter actually testified
19 to, yes.

20 Q. Elizabethtown, 578. Does that sound about
21 right?

22 A. That sounds about right.

23 Q. Do you want to total those up for me? I
24 went to law school because I couldn't add and subtract, but
25 I got about 1,076. Did that sound about right?

1 A. 1,076?

2 Q. 1,076.

3 A. It's got to be more than 1,076.

4 Q. I said I went to law school because I
5 couldn't add.

6 A. It's 600, 1,000, 12 hundred, 15 hundred;
7 you've got almost 2 thousand. I think I said I thought it
8 ranged from 15 hundred to 25 hundred. I didn't write down
9 all your numbers actually, so I'm rounding.

10 THE COURT: I have a calculator if you
11 want, Mr. Simon. I take it back. I can't find it.

12 MR. SIMON: We have someone here who claims
13 to be able to add.

14 MR. TAMBE: Objection, your Honor. That's
15 a gratuitous comment.

16 THE COURT: Gentleman, come on.

17 BY MR. SIMON:

18 Q. So could we round that to about 2 thousand,
19 is that good?

20 A. That's what I did; that would work for me
21 in.

22 Q. And from those 2 thousand actively employed
23 now, how many do you expect will be employed at those five
24 facilities, or whatever number of facilities continue to
25 exist, by the end of the year?

1 A. Well.

2 Q. Your best judgment as you sit here today.

3 A. My best judgment as I sit here today I I'm
4 not aware of any plans in calendar year of 2007 for head
5 count reductions at those facilities.

6 Q. And if Marion is closed when would that
7 occur?

8 A. The decision on Marion or Lima would,
9 depending on when that decision is, we would like to begin
10 to implement that process immediately. It's probably got a
11 couple, three to four month planning horizon, so there
12 wouldn't be a whole lot of activity in the first four
13 months.

14 Q. And looking on the out 2007, can you give
15 us the best just judgment of the number of actively
16 employed employees 450 are now the subject of this 1113 who
17 would be continued to be employed by the company?

18 A. I think it would be using the 2 thousand
19 number. I think we had 404 in Fort Wayne. Fort Wayne, in
20 the facilities optimization program, is the one facility
21 out of the five that is expected to have active employee
22 reductions, and I think that goes to in the year about
23 2010, that would be about 200 employees. So a reduction of
24 approximately 200 from the current rate of 404.

25 Q. And so if you put together, if you decide

1 to close Marion and Fort Wayne is reduced by 200 in your
2 running rate lexicon, we would be talking about what, 14,
3 15 hundred active employees?

4 A. Yes, I think for Marion we had about 320,
5 so that would be correct, yes.

6 Q. And from those run rate 15 hundred active
7 employees, do I understand from your latest version of
8 Debtor's Exhibit 72 -- do you have that in front of you?

9 A. I don't think I do. Was that Mr. --

10 Q. That's the one we got this morning.

11 A. Bueter?

12 Q. That's from Mr. Bueter.

13 MR. SIMON: Does anyone have that?

14 THE WITNESS: Thank you very much, your
15 Honor.

16 A. Yes, I have Debtor's Exhibit 72 in front of
17 me right now.

18 Q. So that's the one that shows savings that
19 you seek from those five plants of 28 million dollars?

20 A. Yes, sir.

21 Q. Which may be 18 million dollars?

22 A. Correct.

23 Q. For 15 hundred employees that's what? How
24 much per employee?

25 A. On 28?

1 Q. Well?

2 A. Around 18 did you say?

3 Q. 18?

4 A. Yes, the 18 would be 18 million on our 15,
5 plus, that's without Marion, so it would be almost a
6 hundred thousand.

7 Q. And for, if you took it on 28?

8 A. On 28 I would have to use the 2000, so that
9 would be 140.

10 Q. Thank you. Did you participate in the
11 creation of Debtor's Exhibit 72?

12 A. No, I did not.

13 Q. Did you see it before this morning?

14 A. Yes, I believe I thought I saw it
15 yesterday.

16 Q. Do you know when you first saw it?

17 A. Yes, I saw it yesterday.

18 Q. Was it created under your direction?

19 A. No it was not.

20 Q. Did you participate in the discussions
21 leading to the creation of this document?

22 A. Excuse me, Mr. Simon, I'm going to back up.
23 I think I may have misspoken. Are we speaking about
24 Debtor's Exhibit 72?

25 Q. Yes, we are.

1 A. Okay.

2 Q. So --

3 A. I'm answering correctly, this was not
4 produced under my supervision.

5 Q. Are you aware that Saturday night we
6 received a version of this document which had estimated
7 savings of 33 million 774 thousand 309 dollars?

8 A. No, I was not aware of that.

9 Q. And it was last night for the first time we
10 received a document showing savings of some five million
11 dollars less. You are not aware of that?

12 A. No, I was not.

13 Q. This was not discussed in any way in your
14 capacity as chief restructuring officer?

15 A. No, it was not.

16 Q. Does it occur to you as passing strange
17 that on the weekend before an 1113 hearing, a union
18 receives for the first time on Saturday night a document
19 describing, for the first time on a five plant basis,
20 projected savings of 33 million 774 thousand 309 dollars,
21 and then 24 hours later, 12 hours before this trial
22 resumes, it receives one showing savings of 5 million
23 dollars less. Is does that strike you as passing strange
24 in your capacity as chief restructuring officer?

25 A. No, it strikes me as an error that someone

1 must have made and corrected after subsequently looking at
2 it.

3 Q. But it doesn't occur to you that providing
4 essential numbers describing the savings to be achieved by
5 this proceeding aren't given to the union until the weekend
6 before the hearing resumes?

7 A. My understanding is that the cost sheets,
8 as Mr. Bueter testified earlier this morning, had been
9 given to representatives of the union and that he took
10 those same sheets, I think is what he testified to, and
11 compiled those, and those were sheets that had been
12 provided to the union, I think, in the earlier part of
13 March.

14 Q. We'll have some testimony on that subject.

15 A. Oh, okay.

16 Q. In your declaration which I think you have
17 before you, it's Tab 1?

18 A. Yes, I do.

19 Q. I direct your attention to paragraph 50.

20 A. 50?

21 Q. Yes.

22 A. Yes.

23 Q. The first bullet point. "First is
24 discussed below Dana's customers are focused on Dana's
25 operating profitability and its prospects for the emergence

1 from bankruptcy as a truly viable long term. Unlikely to
2 grant new business, the suppliers have not proven
3 themselves to be viable and competitive. The reason for
4 this is simple, the customers look for stability and
5 reliability in its supplier."

6 A. Yes, sir.

7 Q. That's pretty clear, is it not?

8 A. Yes.

9 Q. Have you discussed with your customers the
10 possibility of a strike at Dana?

11 A. Yes, we have.

12 Q. And have they exhibited some concern about
13 the stability and reliability of the company in connection
14 with the risk of a strike?

15 A. Yes, they have.

16 Q. And has Dana made strike contingency plans?

17 A. It has made strike contingency plans, yes.

18 Q. And does it plan to hire replacement
19 workers if there is a strike?

20 A. It is my understanding that plans have been
21 made to hire replacement workers if that's required.

22 Q. And have those arrangements been made, do
23 you know?

24 A. I do not know.

25 Q. Have security plans been made by the

1 company in its plan to run a strike with scabs?

2 A. I am not aware of what level security
3 arrangements have or have not been made.

4 Q. Do you know if housing arrangements have
5 been made with for the scabs?

6 A. I don't know if housing arrangements have
7 been made relative to the --

8 Q. Is it the company's plans to use local scab
9 labor or import the scab labor?

10 A. I'm not familiar with the details of the
11 strike contingency plans, so I don't know the answer to
12 that.

13 Q. What have your customers setter to you
14 about the possibility of a strike, if anything?

15 A. The customers have expressed concerns as to
16 how a strike may impact their product supply chain so they
17 are very focused on their own individual facilities as well
18 as things like what preparedness does the company have,
19 what is the status of perspective of the negotiations, and
20 then issues practical issues like inventory banks, which is
21 a way that we could and they could protect the supply chain
22 in the event a strike did occur.

23 Q. Mr. Stenger, earlier you said you had
24 assumed that you could reach agreement with the retiree
25 committee with the nonunion employees implementation and

1 with the IN. Do you remember that testimony?

2 A. Yes, I do.

3 Q. Did you make an assumption as to whether or
4 not you were going to reach an agreement with the steel
5 workers union?

6 A. In the --

7 Q. You can answer that question yes or no.

8 A. Umm.

9 Q. Did you make an assumption?

10 A. Yes, I did.

11 Q. And what was there assumption?

12 A. There were two different scenarios, one was
13 that we did not have a settlement that resulted in the cost
14 savings and the other, which was labeled the needed case
15 assumed that we had a negotiated settlement that provided
16 the 60 million dollars in both OPED and with union wage and
17 benefit related savings.

18 Q. Let's deal for a moment with the assumption
19 that you did not reach an agreement.

20 A. Yes.

21 Q. What plans has the company made with
22 respect to that assumed result in negotiations? That is to
23 say a non consensual agreement, a non consensual
24 arrangement?

25 A. I'm sorry, do you mean relative -- plans

1 relative to what, I'm sorry?

2 Q. Have you made an assumption as to whether
3 or not in the absence of a negotiated agreement this court
4 is more or less likely to issue an order of rejection
5 pursuant to Section 1113?

6 A. I've made no assumptions about what the
7 court is going to do.

8 Q. And that holds true with regard to the auto
9 workers as well?

10 A. Yes, sir.

11 Q. And does that hold true with regard to the
12 nonunion retirees covered by the Section 1114 motion? That
13 is to say have you made an assumption regarding the outcome
14 of the 1114 portion of your motion with respect to the
15 unionized employees?

16 A. The only assumptions are the ones that I
17 articulated a minute ago, which is I showed two scenarios
18 one where we get nothing and one where we get what we've
19 asked for. So those are the two scenarios that have been
20 looked at, assumption sets.

21 Q. Have you made plans regarding
22 implementation of your Section 1114 motion in the event
23 this court grants your motion?

24 A. Yes, plans are already underway with the
25 active employees that are not covered by the union

1 bargaining agreement, we've implemented changes with to
2 retiree benefits there.

3 We are effectuating the settlement with the
4 retiree committee, and I think that the benefits group is
5 prepared for an outcome where we are terminating the
6 retirement benefits for the employees covered by the union
7 bargaining agreements.

8 Q. Have you made plans for what you are going
9 to do with regard to terms and conditions of employment of
10 your unionized employees if this court grants your motion
11 for rejection?

12 A. I'm not aware of that what the specific
13 plans are for the labor negotiations.

14 Q. I'm not talking now about negotiations. Do
15 you plan to implement your 1113 proposal in the event this
16 court grants your motion?

17 A. I believe that the company's intention, if
18 the court grants this motion, is to continue a process of
19 trying to negotiate a resolution with the unions and each
20 of the unionized facilities so that we can have a void
21 avoid a strike.

22 If that is not possible, it will be a
23 decision that the management and board will is to make as
24 to how to implement a decision by this court that the
25 company can reject the contracts.

1 Q. Do I understand you to say it's your
2 understanding that this company has not made a management
3 decision to implement its 1113 proposal if this court
4 grants its motion?

5 MR. TAMBE: Objection. Asked and answered
6 your Honor; he just answered that question.

7 THE COURT: Sustained.

8 Q. As chief restructuring officer, do you have
9 a judgment as to whether or not the company should
10 implement its 113 proposal if this court grants the
11 company's proposal?

12 MR. TAMBE: Objection. He's asking the
13 same question again.

14 MR. SIMON: It is most certainly not.

15 THE COURT: Well, I heard an answer, but
16 I'll let him repeat it.

17 A. The question is?

18 Q. The question is whether you have a judgment
19 as the chief restructuring officer as to whether this
20 company should implement its Section 1113 proposal if this
21 company grants the company's motion?

22 A. Yes. It is my opinion that it is necessary
23 to implement whatever it takes to get the cost savings that
24 we've articulated. And if the bargaining and negotiations
25 are not successful, then the company would need to avail

1 itself of the ability to reject the union agreements.

2 Q. And have you articulated that judgment to
3 either Mr. Burns, or the board, or anyone else to whom you
4 report as chief restructuring officer?

5 A. I have articulated that opinion to Mr.
6 Burns.

7 Q. And has he responded?

8 A. He has not responded. He has taken that
9 advice and will make a decision with that and other advice.

10 Q. And what period of time would you, in your
11 judgment, give for negotiations after this quart, if this
12 court issues an order of rejection, to see whether those
13 negotiations produce a consensual agreement before you in
14 your judgment would have the company implement its 1113
15 proposal?

16 A. I don't think it's possible to answer that
17 question without having the benefit of what in fact
18 transpires in this hypothetical situation after the judge
19 issues a ruling.

20 Q. Have you begun discussions with financial
21 institutions regarding your exit financing?

22 A. We've had only passing discussion with our
23 existing DIP lender about their desire to be part of the
24 exit financing.

25 Q. And would you tell us about those passings

1 discussions? What does that mean?

2 A. Basically it's just been that agent for our
3 current DIP facility which is Citibank has expressed an
4 interest in being kept current of the restructuring process
5 because of their interest in financing the exit facilities
6 for the company.

7 Q. And have you discussed with Citibank as
8 agent the process that you are currently undergoing under
9 Section 1113 and 1114 before this court?

10 A. Yes as the agent for our current credit
11 facility we have discussed that.

12 Q. And have you discussed with the agent the
13 post argument of a strike in the event this court issues an
14 order of rejection?

15 A. I am not aware of at least in my
16 discussions I have not had a specific discussion regarding
17 that.

18 Q. And in your experience as a seasoned
19 restructuring officer, is it your judgment that potential
20 exit lenders will have an interest in whether or not a
21 strike is likely or not likely in the event of a 1113
22 rejection?

23 A. In my estimation, until we have that issue
24 resolved we won't be approaching lenders about exit
25 financing.

1 Q. Was, you know, to a virtual certainty that
2 no exit lending facility is available to a company facing a
3 strike; isn't that right?

4 A. No, I would say its because we would be
5 wasting our time because we're not going to be ready to
6 reargue organize if we are in the middle of negotiations
7 and a strike is eminent. So until I have a vehicle and
8 plan to effectuate to reorganize, I don't need to talk to
9 exit lenders and they are not going to talk to us.

10 Q. Tell us a little bit about your exit plan.
11 You are still planning to exit by the close of '07?

12 A. That is still our intention, yes.

13 Q. Would you walk me through the steps and
14 time line that you as chief restructuring officer have in
15 mind from getting from here until December 31 of '07?

16 A. Yes. I mean broadly --

17 Q. Yes.

18 A. -- the activities are going to be the major
19 milestones will be filing a plan and disclosure statement.

20 Q. And when do you think -- what's the last
21 time you could do that looking for a fourth quarter '07
22 exit?

23 A. We're really pushed to being there in
24 August, an August or September to have that filed.

25 Q. And before getting that filed, would you

1 agree with me that one of the critical steps that you have
2 to go through is developing is credible long term probably
3 five year business plan?

4 A. Yes we'll have a five year business plan
5 developed at that point in time, correct.

6 Q. In fact you had planned to have one by the
7 end of this month, had you not?

8 A. Yes.

9 Q. And do you still intend to fulfill that
10 plan?

11 A. Well, we expect to have a preliminary first
12 pass of our first five year plan yet this March.

13 Q. Have you shared your preliminary views on
14 your five year plan with the creditors' committee?

15 A. No, we have not. We're still developing
16 it. We haven't as yet even shared it with our Board of
17 Directors.

18 Q. So you haven't shared it with any of the
19 professionals of the creditors' committee?

20 A. That is correct yes, sir.

21 Q. And you haven't shared it with your agent
22 bank?

23 A. Correct.

24 Q. And when do you -- what's today? March
25 26th. I guess we have what five business days for the rest

1 of the month, including today. Do you think you'll have
2 your five year business plan in a preliminary form by
3 Friday?

4 A. Yes, by the end of the week we're scheduled
5 to have basically the first pass with basically an income
6 statement view of what the different product groups, a
7 range of outcomes for them on a five year basis.

8 Q. And when do you plan to present that
9 iteration of your business plan to your various
10 constituencies?

11 A. It would be in the month of April sometime,
12 probably in the latter part of April.

13 Q. The latter part of April?

14 A. Yes.

15 Q. And following the presentation of your five
16 year business plan in the latter part of April, and looking
17 forward to an August presentation of a plan of
18 reorganization and disclosure statement, what do you see
19 occurring next?

20 A. Well, there is an a lot of work that needs
21 to be done on a number of fronts, but probably the drafting
22 of the documents is important, and also reaching out and
23 getting a consensus view we would hope to have with our
24 creditors' committee as well as other constituencies as to
25 what plan will look like, what recoveries are and what the

1 distributions would be under such a plan.

2 Q. Have you begun an evaluation a valuation of
3 the company process?

4 A. We have not begun valuation of the company,
5 no.

6 Q. Have you begun a serious assessment of the
7 likely amount of approved claims?

8 A. We have been working very diligently on the
9 claims process, yes.

10 Q. And do you have a judgment as we sit here
11 today about the range of allowed claims that will result
12 from your claims analysis process?

13 A. I think we are basically sticking with
14 estimates that we've made in the K, which I think is about
15 4 billion dollars worth of claims.

16 Q. 4 billion. Are you aware of the current
17 market for the purchase and sale of claims in Dana?

18 A. I'm generally aware, yes.

19 Q. And, again, what's the range of market
20 results regarding the sale as we speak?

21 A. I think the notes are trading in the
22 probably high 60s to low 70s.

23 Q. And with a claims pool of approximately 4
24 billion, what assumption is the market making with regard
25 to the valuation going forward?

1 A. That would suggest a valuation, just on the
2 arithmetic on 2.8 billion perhaps in that range of
3 distributable value to creditors, unsecured creditors I
4 should say.

5 Q. Has the company made a judgment as to
6 whether it is it intense to proceed to exit using debt
7 financing only or whether it contemplates an equity?

8 A. I think really the numbers in the
9 financial, the EBITDAR's suggest that a significant portion
10 of the recovery for unsecured creditors will be in the form
11 of equity securities.

12 Q. And do you assume the current equity will
13 be wiped out?

14 A. I've we've made no assumptions on that.
15 It's been our view that it is very unlikely that there will
16 be a recovery for the current equity holders of the
17 corporation.

18 Q. My earlier question which I think either I
19 misstated or you misunderstood was whether you also
20 anticipate the issuance of equity into the open market in I
21 addition to the issuance of we can equity and liquidation
22 of existing claims?

23 A. We've made -- there's been no assumption
24 yet. I think you are referring to basically a rights
25 offering to sell new stock.

1 Q. Yes?

2 A. There has been no assumption on that nor
3 detailed analytics on that.

4 Q. Have you begun to explore that possibility.
5 Have you had any conversations with any of the financial
6 houses regarding that possibility?

7 A. I have not, no.

8 Q. Do you know whether anyone else in the
9 company's management or board has?

10 A. I do not know that for sure.

11 Q. Would you not expect, as the chief
12 restructuring officer, that that's something you would know
13 if it's going on?

14 A. Yes, I would.

15 Q. Just a matter I think of clarification I
16 think. Would you please turn to paragraph 64 of the
17 declaration?

18 A. Yes, sir.

19 Q. There you are talking about SG&A cost
20 reductions?

21 A. Yes, sir.

22 Q. The first bullet point talks about reducing
23 US head count by approximately 14 percent in the past 18
24 months as a result of general hiring freeze and attrition
25 during the bankruptcy filing.

1 A. Right.

2 Q. Is that SG&A head count or is that company
3 head count?

4 A. That's a good question. I'm not positive
5 of that.

6 Q. Clarification?

7 A. No no, I actually think it may be total
8 head count. I'm trying to envision the data that I was
9 using when I did this in January, but it may be total head
10 count in January in the US.

11 Q. Would you, or would counsel, if it's not
12 the correct head count, simply inform us of that at the
13 next hearing?

14 Thank you.

15 Could you walk us through the development
16 of the various plans and budgets that the company has
17 undertaken since your retention in, when, March of 06?

18 A. Actually we were retained by the court of
19 March of '06 but started working with the company in
20 January.

21 Q. And you began working on the preparation of
22 a two year budget referred to as the DIP plan?

23 A. Yes. In February and March we were started
24 working with the company on the development of the DIP
25 budget that we based our initial financing off of in March

1 of 2006.

2 Q. Now, the DIP budget was being prepared at a
3 time when the company had not made a determination to file
4 Chapter 11; isn't that correct?

5 A. Well the actual DIP budget was prepared
6 when we did in fact know that the company was going to file
7 for bankruptcy. We based it off of a annual operating plan
8 that the company had developed in the four third and fourth
9 quarter of calendar year 2005 and we worked with the
10 company to update that beginning in February of 06 to use
11 it as the basis for going out and getting the DIP
12 financing.

13 Q. So you obviously shared it with your DIP
14 finance partners?

15 A. Yes, that's correct.

16 Q. Was it ever presented to the creditors
17 committee? I realize the creditors' committee was formed
18 subsequently but was that plan submitted to the creditors
19 committee?

20 A. Yes, it was submitted to the committee once
21 it was formed and had advisors.

22 Q. Do you recall when that was?

23 A. I don't specifically, I would think it was
24 in the month of April though.

25 Q. Do you recall whether that DIP financing

1 plan was submitted to either the steel workers or the auto
2 workers?

3 A. I do not. I it would not have been
4 submitted I believe contemporaneous of April of '06, but it
5 may have been provided in the context of some of the due
6 diligence that's been going on for, I guess the past couple
7 of months.

8 Q. Tell us, there then came a 2007 DIP plan,
9 correct?

10 A. Yes, sir.

11 Q. Would you tell us about that?

12 A. That is a plan which we refer to as the DIP
13 budget supplement, which we prepared and issued in the
14 midpoint of December of this year, was based on a detailed
15 facility budget for the calendar year of '07, which we then
16 overlaid on to that the results which I spoke of earlier of
17 the various initiatives with the exclusion of union and
18 retiree related initiatives, and any savings from those
19 were not included.

20 That was then also adjusted to reflect
21 additional borrowings under our term facility which we were
22 proposing to the DIP lenders and use that as its basis to
23 negotiate with our DIP lenders for a larger facility as
24 well as financial recoverance.

25 Q. And that resulted in the 2007 pro forma

1 plan?

2 A. Well, perhaps you could help me, which 2007
3 pro forma plan is has been used in a bunch of different --

4 Q. You may want to refer to paragraph 52.
5 There's no mystery about this.

6 A. Good.

7 Q. Yes?

8 A. Could you repeat the question? I'm sorry.

9 Q. Yes. I'm trying to get the relationship
10 between the 2007 pro forma plan and its 2007 DIP plan?

11 A. Oh, I'm sorry. The 2007 pro forma plan was
12 basically developed in its summer. It was ultimately used
13 as a starting point for where we were looking at pro forma
14 operating results against the initiatives and where we set
15 our base line was expected to be and then we then
16 determined what we would need to actually achieve to get to
17 the operating metrics that would get us to our competitive
18 averages so that was in the summer and late summer.

19 That was then replaced when we did the
20 actual budgeting process which started in late August and
21 concluded in late act which we then called the 2007 base
22 EBITDAR plan.

23 Q. Was the either the 2007 pro forma or the
24 2007 DIP plan provided to the creditor committee?

25 A. The 2007 pro forma estimates were provided

1 to its committee I think in September. And then the 2007
2 DIP budget supplement was, as well as the 2007 base plan
3 which was the annual operating budget before layering in
4 the initiatives, those were both provided to the committees
5 in December, December 8th, I believe, for the first one,
6 and December 18th for the DIP budget supplement.

7 Q. And were they also presented to your
8 lenders?

9 A. The lenders were presented with the budget
10 supplement in December 18th. They were not provided with
11 its 2007 base plan.

12 Q. And were either of them presented to either
13 a committee or an independent note holders?

14 A. No, neither of those has been presented to
15 them. I assume you mean the ad hoc bondholders.

16 Q. Or any antecedent?

17 A. No it is not shared it is still a
18 confidential document only provided to people whom have
19 executed confidentiality agreements.

20 Q. And have they been shared why with the
21 unions?

22 A. They have been shared with the advisors to
23 the unions.

24 Q. Do you know whether?

25 A. Specifically no, but I would say

1 concurrently for example, I believe that the manufacture
2 Mr. Potok's firm will had already been retained by the
3 committee's when we had a meeting to for the base plan of
4 2007 and that was a December 8th also during that period
5 since it was presented to the full creditors committee the
6 USW has representatives on the creditors' committee so they
7 would have seen it at that time as well.

8 Q. Do you recall testifying at your deposition
9 Mr. Stenger ger that commodity prices are trending down?

10 MR. TAMBE: Can I have a reference please.

11 MR. SIMON: Strike that.

12 Q. Do you believe that commodity prices are
13 trending down?

14 A. I testified at my deposition that I thought
15 some of the commodity prices had been trending down, yes.

16 Q. At page 86 of your deposition, if you
17 gentleman have a copy of it to give the witness?

18 THE COURT: The question directed at you.

19 MR. SIMON: Do you have a copy of the
20 witness' deposition. Would you provide it to him? Page
21 86.

22 MR. TAMBE: You want me to provide it to
23 him?

24 MR. SIMON: Yes.

25 MR. TAMBE: My copy is marked, so give us a

1 second to get a clean copy.

2 MR. MAYER: We have a clean copy.

3 MR. SIMON: May I approach?

4 THE WITNESS: Thank you.

5 BY MR. SIMON:

6 Q. Do you know at line 14.

7 "Question. Mr. Stenger, when you refer to
8 targeted industry benchmarks, is that the 4 percent EBIT
9 number.

10 "Answer. It is, yeah, operating, profit
11 margins and other metrics, but yes."

12 Is that a correct reading of your
13 testimony?

14 A. Yes, of lines 14 through 16.

15 Q. Thank you.

16 A. Or 18, excuse me.

17 Q. Would you please turn to page 92?

18 A. Yes.

19 Q. Line 21?

20 A. Yes.

21 Q. You will see when I get to -- when these
22 numbers get to '09, we are very close to that 4 percent
23 EBIT margin that we talked about earlier it is 36 on the
24 schedule specifically which I said before is kind of where
25 we were, and you jumped ahead.

1 MR. TAMBE: Is there a question?

2 MR. SIMON: I'm getting to it.

3 Q. Jump to page 94. I will say it, on line
4 14.

5 A. Okay, yes, I'm there.

6 Q. I will say it again, the target range we
7 are looking at is the minimum of 4 on EBIT. Is that your
8 testimony?

9 A. Yes, that was in response to whether it was
10 7.5 EBITDAR.

11 Q. And in today's notebook?

12 A. Yes.

13 Q. If you would turn to Tab 6, the bubble
14 chart?

15 A. Yes.

16 Q. Debtor's Exhibit 35?

17 A. Yes, I have that in front of me.

18 Q. Calling your attention to the retiree
19 bucket 70 to 90 million dollars?

20 A. Yes, sir.

21 Q. Can you break out for us how much of that
22 was attributable to steel workers, auto workers, IAM, and
23 nonunion?

24 A. As I sit here today, I cannot break it into
25 those four categories, no.

1 Q. Have they been broken out by the company?
2 Are there break out numbers?

3 A. I believe there are, yes, yes there's been
4 because it's by plan and by facility and by agreement.

5 Q. Do I understand your testimony to be that
6 with regard to the IAM and nonunion portion of that bucket,
7 you have achieved 30 million of the 70 to 90 million dollar
8 bucket?

9 A. That is -- actually I don't think I
10 testified to that. It's part of my deposition exhibit, I
11 didn't actually, specifically say that but --

12 MR. TAMBE: And, your Honor, that's an item
13 that --

14 THE WITNESS: -- if you read the document.

15 MR. TAMBE: -- that's a number that has not
16 been publicized, that breakout and that allocation; it's
17 not public information, it's certainly available in the
18 exhibits that we used today so counsel knows what the
19 number is and your Honor knows what the number is, but that
20 has not been publically disclosed.

21 MR. SIMON: And I believe it should be,
22 your Honor, if we are talking about equity and balancing
23 the equities and good cause I believe that the achievement
24 by the company of some level of savings attributable to
25 those with whom it is settled is critical information.

1 MR. TAMBE: Maybe, if I could respond your
2 Honor, maybe that may be counsel's view, but before the
3 confidential information, we believe is confidential is put
4 on the public record, if we could just have an opportunity
5 to let your Honor know why we believe it's confidential and
6 why the confidentiality should be protected. And once he's
7 asked the question and put the number out there it's on the
8 public record, and I ask for that number to be stricken
9 from the public record.

10 It doesn't help the process, whether it's
11 this number or some other numbers that we might get on
12 later on in this cross examination, to have some of these
13 numbers in the public record even as the company is making
14 efforts to negotiate with various constituencies not just
15 with the union, but also with its customers to reach the
16 results it's trying to reach.

17 MR. SIMON: Notice, your Honor, there was
18 no claim that it's commercially sensitive information that
19 would put them at a competitive disadvantage, vis a vis the
20 dealings with either the suppliers or their customers.

21 MR. TAMBE: It's included, it's a
22 competitive advantage as well.

23 MR. MAYER: Could you suggest a five minute
24 recess to discuss this, your Honor?

25 THE COURT: Sure. Five minute recess.

1 (Recess taken.)

2 MR. TAMBE: Your Honor, with respect to the
3 item we were discussing rights before the break our
4 concerns are really two fold. And with respect to that
5 item, and I'm envisioning some other items coming up that
6 would fall into similar categories.

7 One is information that has not been made
8 public by the company and that can affect our negotiation
9 with our customers or affect us from a competitive
10 standpoint.

11 And the other is non public information,
12 that if broadcast by the issuant here, would permit someone
13 to trade on material non public information not generally
14 made available to investors by the issuer. I think we have
15 both kinds of problems with the number that was put on the
16 record.

17 Now ultimately that particular number that
18 was discussed on the record by Mr. Simon is a number that
19 maybe can be reverse engineered by people out there and, in
20 fact, be made public by the company in the very near
21 future. So with respect to that number I'm not going to
22 try to have that stricken off the record.

23 But the concern that that raises I think is
24 going to apply to a number of other issues that may or may
25 not come up in cross examination. And I don't want a

1 situation to come up where the number is put on the record
2 or confidential information is put on the record where we
3 have to then appropriately object to that.

4 If there is information that counsel
5 believes has to be made part of a question and it's
6 confidential information, then I think there should be an
7 advanced ruling sought with respect to that information, or
8 at lease discussion between counsel so that we can avoid a
9 situation where information that we believe is confidential
10 and can effect us with respect to competitiveness and can
11 effect us with respect to release of non public material
12 information can be dealt with and addressed before it goes
13 out on the public record.

14 Certainly when we did the direct
15 examination we were able to examine the witness with
16 respect to a lot of could confidential information without
17 putting that information on this public record. It remains
18 within the confidential exhibits that are in the trial
19 binder. And if it's possible for counsel to follow that
20 same approach, I think that will address the question;
21 however, I don't want to suggest how the cross examination
22 should be conducted no do I want to impede the cross
23 examination by my adversary.

24 If he feels he wants to have a free flowing
25 cross examination where he's free to examine this witness

1 to about information the debtors feel is confidential, than
2 the only other solution is to seal the courtroom or limit
3 the courtroom attendees to those who have signed
4 confidentiality agreements. And in that regard what we
5 would suggest is we proceed that way, and within 72 hours
6 of the proceeding being completed, this aspect of the
7 proceeding being completed, we will review the transcript
8 and release publicly those aspects that do not implicate
9 confidential, non public confidential information.

10 MR. MAYER: Your Honor, the creditors'
11 committee has a limited perspective on this, but it may be
12 relevant.

13 There's a different between information
14 that is to forward looking and is a projection, and I can
15 understand the company's sensitivity with respect to that
16 information.

17 What we are dealing with here is an
18 actuarial determination that has been very recently made
19 about an event that has already happened. It is my
20 personal view that this is an AK disclosable item and that
21 the company is under obligation to disclose this as soon as
22 possible.

23 And with that I'll sit down. I would have
24 to late a to have a fetish made of keeping it confidential,
25 only to have the company's securities lawyers determine

1 that they have to put it out on AK anyway.

2 MR. TAMBE: If I can respond to that.

3 Hence my comment in the very beginning.

4 With this particular number, it may be a number that's made
5 public by the company.

6 THE COURT: Very frankly, gentleman, when I
7 heard the question and heard the argument I was a little
8 surprised that this was the opener with respect to this
9 kind of problem because of the numbers that I saw and the
10 issue were rather benign. I see where you're concerned
11 that it might lead to something that is not so benign.

12 I was prepared to allow Mr. Simon to go
13 forward on the fact that I didn't see where it was
14 necessarily harmful, but I do see prospectively the problem
15 and I will ask that the two of you can get together to
16 decide how the gate keeping is to take place with respect
17 to this particular question and this particular issue, I
18 agree, I don't see there's any problem with Mr. Simon
19 extracting the information that he seeks in connection with
20 this question.

21 But Mr. Simon, going forward, if this leads
22 to a more expansive extrication of matters that are truly
23 confidential that ought to be precluded, rather than have
24 the court faced with the problem of sealing and then
25 reviewing on a 72 hour basis later, I think that there

1 should be some communication among of two of you as to what
2 your plans are with respect to that kind of confidential
3 information that you may be seeking for a particular
4 advantage or disadvantage to put out on the public record,
5 perhaps properly, perhaps improperly.

6 So if you folks want another five minutes
7 to talk to each other and explore where you are going,
8 that's fine, otherwise I might be more restrictive when an
9 objection is made and I see grounds that make the objection
10 sustainable. As of right now I don't see a sustainable
11 objection.

12 MR. SIMON: Your Honor, if I may make a
13 suggestion.

14 THE COURT: Yes.

15 MR. SIMON: I think we only have another
16 couple of questions at most on this precise question.

17 I then intend to move into another area
18 that I believe my friend across the aisle will consider to
19 be objectionable. I have no intention voluntarily of not
20 pursuing those questions. I will disclose the area that I
21 seek to inquire with counsel, provided I have an assurance
22 that that discussion will not be conveyed to the witness.
23 I do not want the witness pre-prepared to deal with those
24 questions as a consequence.

25 THE COURT: You have a valid point. I just

1 want that you will consult with each other before you
2 embark on that area.

3 MR. SIMON: And then my suggestion would
4 be, because then I foresee not reaching agreement on the
5 next one, that if the court would choose to have argument
6 here or in chambers in chambers I'm perfectly delighted to
7 do it.

8 The unions have a very strong interest in
9 having this being a free, open and public court. We
10 believe the Supreme Court, we believe the Second Circuit,
11 we believe this court and the Bankruptcy Rules all so
12 provide except in exceedingly narrow circumstances where
13 the burden is on the debtor. And we can argue those point
14 by point, and perhaps we should. And maybe after we've
15 dealt with a couple we will have a footprint for the
16 future. But make no mistake that we believe that this is
17 information which should be open and available to the
18 public.

19 THE COURT: But I do understand that before
20 we get into this area, we'll take a break.

21 MR. SIMON: Yes.

22 THE COURT: Go ahead, Mr. Simon.

23 MR. SIMON: Is it possible to resurrect the
24 last question?

25 THE WITNESS: I certainly hope so.

1 THE COURT: There is a bubble, it's the
2 third one down, retirees 70 to 90 million.

3 BY MR. SIMON:

4 Q. And the we question was whether the
5 relationship, the 30 million dollar number attributable to
6 the savings from the agreement on retiree benefits with the
7 retiree committee had to the target amount for that group?

8 A. The answer to that is that would be a
9 dollar for dollar reduction of the 70 to 90, so it would be
10 70 minus the 30 to 40, and the 90 minus the 30 to 60, so it
11 would take that to being low to high, 40 to 60.

12 Q. So I guess what I'm asking is you had some
13 targeted result in mind for that unit of savings?

14 A. Yes.

15 Q. There were retiree benefits for nonunion as
16 to which you've achieved on a 30 million dollar savings?

17 A. Correct.

18 Q. And my question to you is what relationship
19 does that bear to what you had planned to achieve to that
20 group? I would suggest to you, and see if this rings a
21 bell, that it represents approximately 30 percent of your
22 ask. Does that ring a bell? If not, help us.

23 A. No. 30 percent of the ask to the salary?

24 Q. Yes, to the nonunion.

25 A. The entirety of their projected benefit is

1 now expected to be a 30 million dollar deference and
2 reduction in what our expenses will be going forward.

3 Q. Correct so it's a question of 30 million
4 dollar reduction from what?

5 A. Our goal had been to get the expense
6 related to the nonunion retirees taken to zero so it we got
7 a hundred percent of the 30 million that we were looking
8 for. The 30 million is in updated number that was just run
9 I believe by Towers Perrin in the last week since the
10 settlement occurred.

11 Q. Do you have Debtor's Exhibit 64 in front of
12 you Debtor's Exhibit marked for identification number 64?
13 It's the letter from Towers Perrin dated March 21.

14 A. I believe I do.

15 Q. Yes, I do. We just got it.

16 Directing your attention to the second
17 bullet point on page 1?

18 A. Yes.

19 Q. I'm going to try to avoid discussion now of
20 the disputes over what is and whatnot is not public. You
21 see the notation of periodic costs improvement?

22 A. Yes.

23 Q. And does that work out to something like a
24 30 percent reduction in periodic costs?

25 A. It's probably close do that number.

1 Q. Okay, thank you.

2 A. Just so I can be clear, 30 percent of what
3 30 percent.

4 MR. SIMON: Your counsel will be able to
5 ask you any questions you like I appreciate it if you limit
6 your questions just answers just to questions I ask. Thank
7 you.

8 THE WITNESS: You're welcome.

9 MR. SIMON: I think we're now at that
10 point, Judge, where a two minute conversation among counsel
11 would probably be useful, and then if unsuccessful we will
12 have to present you with the question.

13 THE COURT: Do you want to do it outside or
14 clear the courtroom?

15 MR. SIMON: I think we can do it in the
16 corner.

17 (Recess taken.)

18 MR. SIMON: Your Honor, I think we worked
19 out a modus operandi.

20 We have two additional bubble items, bubble
21 buckets I guess they are called, which I will address in
22 open court. I think with minimum intrusion from my friends
23 across the aisle and there is one area that I would like to
24 pursue, but I agree with regard to this particular area the
25 company may have a will get miss basis for asking it to

1 remain sealed, so for that limited portion it will only be
2 a couple of questions. And probably the only way to do
3 that would be with a sealed courtroom.

4 THE COURT: Okay.

5 BY MR. SIMON:

6 Q. With respect to the SG&A bubble which is 40
7 to 50 million dollars?

8 A. Yes, sir. Are we still on exhibit --

9 Q. I'm sorry?

10 A. Are we still on Debtor's 35?

11 Q. Yes.

12 A. Thank you.

13 Q. I believe you testified that one half of
14 that had been implemented. Do you recall testifying to
15 that?

16 A. Yes we have about one half of that we that
17 we expect to be implemented and create those savings in
18 calendar year 2007.

19 Q. Now with respect to that half, could you
20 describe to us what that half is? Not in delay terms in
21 substance terms?

22 A. Yes.

23 Q. What areas of reduction are producing the
24 savings that you you've described?

25 A. Okay. Generally it falls in a couple of

1 categories. One is we have service centers where we do
2 accounting and sales management and back office type
3 functions both in the US in South America, and in Europe.
4 We've implemented head count reductions and further
5 consolidations in some of those service center areas?

6 Q. Okay, pause.

7 A. Yes.

8 Q. On that subject, if I may, because I think
9 it will aid our ability to do this the way we would like to
10 do it.

11 With respect to the service center area
12 you've just identified, had the company targeted an amount
13 of savings to be achieved by that prior to the creation of
14 and as part of the creation of the bubble chart?

15 A. Well --

16 Q. Did you say at that point from
17 consolidating service center operations we're going to save
18 X millions of dollars?

19 A. Not specifically. What we did have though
20 was a list of articulated areas, including service centers
21 where we expected and were going to drive save. We had a
22 bigger estimate relative to that because we hadn't done as
23 much finite work there.

24 Q. To what extent had the various elements of
25 your SG&A bucket been assigned various target savings

1 amounts? In other words, you have 40 -- I'm sorry 40 to 50
2 million dollars of which 10 million dollars is customer
3 service, 10 million dollars is X, 10 million dollars is Y,
4 10 million dollars is Z. Did you do anything like that
5 kind of discrete assignment of discrete amounts of savings
6 to discrete areas in SG&A?

7 A. Yes, we have done that.

8 Q. Now with respect to the half you have you
9 have accomplished, what percentage of your assigned
10 discrete I saving amounts have you actually achieved?

11 A. I don't think that we actually had specific
12 target individually for the areas like we've made changed
13 to as part of the F and A finance and account area, we had
14 fact targeted finance and accounting for X amount we have
15 done three or four things in finance accounting. We're
16 close to X but we're going to have to do more to get to the
17 target that we had set for finance and accounting.

18 Q. I guess what I'm asking is the level of
19 success you have had in achieving what you will targeted to
20 achieve for specific areas for which you had targeted
21 savings?

22 A. On balance I think we've been fairly close.
23 Some have in some areas we've under achieved in those areas
24 we have now raised the bar in other areas. So for example,
25 finance and accounting we expect to achieve what they were

1 target the with. We may be a little light in one or two
2 other areas and we're going to go to the larger cost pools
3 which at Dana are purchase services and engineering and
4 look closer at those areas. Can we get more than we had
5 targeted those areas with.

6 Q. Moving to the footprint. There you had
7 targeted in the bubble chart 60 to 85 million dollars of
8 targeted savings. E correct?

9 A. Correct.

10 Q. And on direct testimony I believe you
11 stated that some of that had been complete and you made a
12 specific reference to Charlotte. Do you recall that?

13 A. Yes, I think I mentioned that.

14 Q. And you made a specific reference to
15 something else but my notes --

16 A. Renton.

17 Q. Excuse me?

18 A. Charlotte and Renton, which are --

19 Q. Renton?

20 A. Renton, R-E-N-T-O-N, which are two assembly
21 and sequencing facilities that we have in our torque
22 products group. I mentioned in Charlotte we announced and
23 finished the closure in the fourth quarter, and in Renton I
24 believe we announced the closure in December at the end of
25 December, early January, and that's completed now as well.

1 Q. And can you tell us how much of the 60 to
2 85 million dollars is attributable to those two Charlotte
3 and Renton and pause for a moment is that consistent with
4 our understanding?

5 MR. TAMBE: I wasn't quite sure that that
6 was the question you were going to ask, but I will defer to
7 the witness I know that break out is not public. And if it
8 raises specific concerns from the company's perspective in
9 terms of what's public and what might put us at a
10 competitive disadvantage I will defer to the witness on
11 that, but that question is fine by me.

12 A. I with relative to the two facilities they
13 are both assembly we consolidated them into Louisville I
14 don't have exact numbers but I think each of them range
15 from almost a million to somewhere north of a million so we
16 probably picked up about two, maybe probably a little bit
17 more in run rate savings.

18 Q. And in addition to those, is that the order
19 of magnitude on what the you you've accomplished on the 60
20 to 85 million footprint items, so there's really only a
21 small portion.

22 A. Yes. For the year calendar year 2006 our
23 expectation is we'll realize about five million of net
24 savings.

25 MR. SIMON: Your Honor, I think we're at

1 the point where I the next question I would ask falls into
2 the category -- whoops (hanging).

3 The question is whether in the footprint
4 you are counting in the 60 to 85, you're counting savings
5 from Bristol and Buena Vista.

6 A. No, we are not. Those are two facilities
7 that we announced the closures of in '05 and have proceeded
8 to complete those. Actually the BV is, or Buena Vista is
9 done and Bristol is almost done.

10 MR. TAMBE: I think counsel is about to
11 move to the area I think we agreed on that the courtroom
12 should be closed for because it's going into an area that
13 directly affects ongoing discussions, and it's sensitive
14 information.

15 MR. SIMON: I think it will be about five
16 minutes.

17 THE COURT: Will the people sitting beyond
18 the bar please vacate for five minutes?

19 (Whereupon the courtroom was cleared.)

20 THE COURT: Mr. Simon, do you have any idea
21 how much you have on voir dire?

22 MR. SIMON: Not much longer, 15 minutes at
23 most, and maybe, depending on the outcome of this, even
24 less.

25 THE COURT: I want you to cater to my jet

1 lag.

2 MR. SIMON: Okay. How about catering to
3 mine I got back from Charleston, South Carolina late last
4 night.

5 THE COURT: I got back from Africa after
6 midnight.

7 MR. TAMBE: I think he wins.

8 MR. SIMON: Yes.

9 THE WITNESS: He wins.

10 THE COURT: 26 hours.

11 MR. SIMON: Just so that I don't get hoist
12 on my on own petard subsequently, I think maybe a word of
13 explanation as to why I yielded on this one issue.

14 This is one that deals directly with
15 negotiations between the company and its customers. And
16 even I can understand that there may be might be some
17 sensitivity concerning the utilization of answers by
18 customers in subsequent affairs. It is only in those in
19 that restricted area that I would be prepared to yield on
20 this issue.

21 MR. TAMBE: And I assume this part of the
22 proceeding will be in a sealed or separate transcript.

23 THE COURT: The reporter is so instructed.

24 MR. TAMBE: Thank you, your Honor.

25

1 MR. SIMON: And it is much ado about
2 nothing.

3 THE COURT: Well, much that goes on in this
4 courtroom is much ado about nothing.

5 All right.

6 (Confidential Portion of Testimony
7 Extracted)

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1 EXAMINATION CONTINUED BY MR. SIMON:

2 Q. Mr. Stenger, in paragraph 44 --

3 A. Yes, I'm at paragraph 44.

4 Q. -- the company states in the 1113 proposal
5 the debtors have proposed modifications to hour of wage
6 rates to be paid for collectively bargaining employees
7 working at facilities where the average wage exceeds 17
8 dollars a however. And the modification is necessary to
9 standard dies the hourly wage paid across all Dana's
10 manufacturing facilities and to bring Dana's hourly wage
11 costs into alignment with the costs of its competitors."
12 Which competitors does did Dana look at for the wage cost
13 comparisons regarding that paragraph?

14 A. Specifically, I'm not aware of which
15 specific competitors we did babe labor rate comparisons on.

16 Q. Do you know whether at the comparison plant
17 the employees who you mentioned as competitors had
18 comparable skills to the employees of Dana?

19 A. I do not.

20 Q. Which of Dana's manufacturing facilities
21 were looked at to use as a basis line for the effort "to
22 standard dies the hourly wage paid across all of Dana's
23 manufacturing facility" I believe?

24 A. I believe based on discussions I've had
25 with members of the labor team, predominately, Mr. Bueter,

1 he may have testified to this already, but it was based on
2 looking at a cross section of the benefits and looking at
3 all the benefits in the North America US.

4 Q. North America, not global, because it says
5 all facilities, it doesn't distinguish.

6 A. I think it was looked at on a reach mat and
7 North America US were compared to each other.

8 Q. Do you know whether it included nonunion as
9 well as union facilities of Dana in North America or was it
10 union to union?

11 A. No, I believe it was cross all the
12 facilities to so it would be union nonunion facilities.

13 Q. And do you know whether the comparison was
14 played of similarly skilled employees in Dana's union and
15 nonunion facilities in North America?

16 A. I don't know that firsthand, I'm sorry.

17 Q. Now is it still part of Dana's Section 1113
18 motion to impose a two tier wage structure at all of Dana's
19 plants, or is that limited to the five plants and the other
20 plants relegated to what you've called normal collective
21 bargaining?

22 A. Well, I mean as I understand it 1113 motion
23 is just going to those five facilities. The tier two
24 structure a two tier wage structure is either already
25 implemented or is being implemented at all of the

1 facilities that Dana has in the US. It's those five under
2 the 1113 and several others that have union representation
3 that didn't get a 1113 proposal that we have not
4 implemented yet.

5 Q. And with regard to those plants, other than
6 the five, where you're seeking to negotiate a two tier says
7 systems but are not seeking to use this proceeding to
8 achieve that result; is that a fair statement?

9 A. It's a fair statement as with respect to
10 facilities that have union agreements or union
11 representation.

12 Q. Yes, I meant to limit to union.

13 A. Yes, because for the other ones we've
14 already implement it and we are already negotiating in the
15 other ones that didn't get the 1113, that's correct.

16 Q. And do you know before the savings had you
17 attributed to the realization of a two tier structure where
18 it now doesn't exist, includes the plants which are not
19 subject to the 1113 proceeding.

20 A. In the schedule it does include those that
21 are not subject to the 1113, except for that the one column
22 where Mr. Bueter tried to just articulate 1113.

23 Q. But just to make it clear if the court
24 grants it's Section 1113, the company would not treat that
25 as authorization to impose a two tier solution at the

1 plants not covered by the 1113, it might be your goal but
2 it's not something you would implement?

3 A. It may be a little over my head now in
4 terms of what legally is happening here. I my
5 understanding is we are implemented or have implemented for
6 non bore gained for facilities two tier wage structures in
7 the nonunion knifed no one represented plants in the US.
8 For those US plants, for example, Lima and Pottstown where
9 we have an expired master agreement it is my understanding
10 that we are negotiating or attempting to negotiate two tier
11 wage structure if in those facilities, but that's not part
12 of the 1113.

13 Q. That's right and either you will succeed or
14 not succeed in those negotiations, but this proceeding will
15 not produce that report?

16 A. That's my understanding.

17 Q. Have you include in your projected labor
18 cost savings any result with respect to let's say 9 master
19 contract negotiations or the negotiations with respect to
20 plants that are not covered by the 1113?

21 A. Yes, we have.

22 Q. With respect to the termination of retiree
23 health benefits, was it the company's assessment that its
24 legal right or its right to terminate those benefits
25 unilaterally without regard to 1114 was substantially

1 stronger with regard to nonunion employees than it was with
2 regard to union employees?

3 MR. TAMBE: Your Honor, I would object to
4 the extent it calls for this witness to divulge information
5 from any communications he had with counsel, it really
6 calls for a legal conclusion.

7 THE COURT: Well the question started out
8 by asking for a legal conclusion so your question is
9 sustained.

10 MR. SIMON: I think the point is made.
11 Nothing further, your Honor.

12 MR. TAMBE: Tom, do you have questions?

13 MR. MAYER: Your Honor, I don't have a
14 question but the record contains an arithmetical inaccuracy
15 I believe the witness testified if you take 28 million and
16 you divide it by I think it was 2 thousand employees I
17 think he added a zero to the final number and I.

18 THE WITNESS: Thank you I was hoping.

19 MR. MAYER: I have not spoken to the
20 witness during the break.

21 MR. SIMON: The record will speak for
22 itself your Honor.

23 MR. TAMBE: If we can have.

24 THE COURT: Well, it was using your law
25 school math as I recall.

1 MR. TAMBE: If we could just that have two
2 minutes your Honor we play have some brief questions a
3 redirect.

4 THE COURT: Very well.

5 (Recess taken.)

6 REDIRECT EXAMINATION BY MR. TAMBE:

7 Q. Mr. Stenger, you were asked some questions
8 you were asked about a particular EBIT percentage and there
9 was some EBIT and there was some testimony on that what I'm
10 going to do is take you to your declaration and in your
11 declaration?

12 A. Can I get a copy of the declaration?

13 Q. It's in the binder. Tab one in the
14 declaration if I could draw your attention to paragraph 48,
15 49 and 50 and ask you whether your opinions as to minimum
16 ranges of EBIT and more achievable or sustainable levels of
17 EBIT are sustained able in paragraphs 48, 49 and 50 of your
18 deposition?

19 A. Yes. In those three paragraphs I walked
20 through, if you will the competitor analysis that we did,
21 said that the five year average was five and six that we
22 needed to be able to achieve in a near term basis
23 performance in the five to six approaching that average if
24 we are to be competitive. And my near term that was
25 basically a three year window.

1 I then further testified that as an
2 absolute kind of bare minimum threshold we the had to be
3 able to demonstrate and articulate and convince not only
4 customers but other constituents like exit lenders that we
5 could get to an at least a 4 percent level by '08, '09.

6 Q. In your opinion Mr. Stenger, is that
7 minimum percentage a sustained able viable percentage of
8 which the company can succeed longer?

9 A. No, it is not.

10 Q. You were asked about some questions about
11 the updated numbers from Towers Perrin that's shown in
12 Exhibit 64. Do you still have a copy of that?

13 A. Yes, I do have it.

14 Q. There was some discussion about what
15 percentage of expense is attributable to nonunion retirees
16 and others with which whom the company has settled. What
17 percentage of that have been achieved?

18 A. Yes.

19 Q. Can you answer that question what
20 percentage of the savings?

21 A. The percentage achieved based on these
22 would be 30 percent of the expense rate as being reduced
23 based on the settlements with the IAM and the nonunion
24 retirees.

25 Q. And the 30 percent number that you referred

1 to is 30 percent of the entire amount, correct?

2 A. That is correct.

3 Q. So what remains is attributable to the
4 unions, correct?

5 A. It would be attributable to the unions both
6 retired and active because some of the expenses is relative
7 to active participants as well.

8 Q. And you were asked some questions about
9 labor savings do you recall those questions?

10 A. I was.

11 Q. And as an expert providing restructuring
12 advisory services, did you rely on information and
13 calculation as provided to you by the Dana labor team?

14 A. Yes absolute absolutely.

15 Q. And with respect to specific labor items
16 did you rely on the Dana labor team for data and
17 information?

18 A. Yes, I did.

19 MR. TAMBE: Those are all the questions I
20 have. Thank you, your Honor.

21 RECROSS EXAMINATION BY MR. SIMON:

22 Q. Having adopted them, do you adopt those as
23 your own?

24 A. I adopt them for use as chief restructuring
25 officer for among running the program and taking the

1 responsibilities, yes, sir.

2 MR. TAMBE: Nothing further, your Honor.

3 THE COURT: All right.

4 We'll resume at 10 o'clock tomorrow
5 morning.

6 MR. TAMBE: Thank you, your Honor.

7 (Time noted: 4:15 p.m.)

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1 March 26, 2007.

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5 WITNESS DIRECT CROSS REDIR RECROSS V. DIRE

6 CHRISTOPHER BUETER 19 25, 27 23

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10 E X H I B I T S

11 DEBTOR'S received IN EVIDENCE

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C E R T I F I C A T E

STATE OF NEW YORK }
 } ss.:
COUNTY OF WESTCHESTER }

I, Denise Nowak, a Shorthand Reporter and
Notary Public within and for the State of New
York, do hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not related,
by blood or marriage, to any of the parties in
this matter and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this _____ day of _____, 2007.

DENISE NOWAK

A			
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EXHIBIT F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of

DANA CORPORATION, 06-10354

Debtor.

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United States Bankruptcy Court

One Bowling Green

New York, New York

March 27, 2007

10:02 a.m.

B E F O R E:

HON. BURTON R. LIFLAND,

United States Bankruptcy Judge

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P R O C E E D I N G S

THE COURT: Be seated, please.

MR. TAMBE: Good morning, your Honor, Jay Tambe from Jones Day on behalf of debtors.

THE COURT: Good morning.

MR. TAMBE: We're ready to proceed with our next witness on the 1113 and 1114 hearing. The next witness will be Mr. Miller. My colleague, Mr. Bennett, will do the examination.

MR. BENNETT: Good morning, your Honor. May I proceed?

THE COURT: Yes.

MR. BENNETT: You have binders for everybody, I think, including the court. Go ahead.

J E F F R E Y M I L L E R , having been duly sworn, was examined and testified as follows:

MR. BENNETT: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. BENNETT:

Q. Mr. Miller, could you tell the court your current position of employment, please.

A. I am a senior manager at BMC Group.

Q. You need to keep your voice up, and you may want to bring the microphone just a bit closer to you.

A. Senior manager at BMC Group.

1 MR. BENNETT: We're having technical
2 difficulties.

3 (A pause in the proceedings.)

4 THE COURT: We can take a five-minute recess or
5 you can talk loudly.

6 THE WITNESS: I can talk louder.

7 MR. BENNETT: I'll keep my voice up and you keep
8 your voice up and we'll see what we can do.

9 Q. Could you just again repeat for the court what
10 your current position of employment is.

11 A. I'm a senior manager at BMC Group.

12 Q. And could you tell us what your education
13 background is.

14 THE COURT: Can you hear in the back?

15 A. I received my business degree from USC and my
16 MBA from Pepperdine. Shortly thereafter, I started at BMC
17 after my MBA degree.

18 THE COURT: We'll take a five-minute recess and
19 we'll get this solved.

20 MR. BENNETT: Okay.

21 (Recess taken.)

22 THE COURT: Take two.

23 MR. BENNETT: Yes.

24 THE COURT: From the top.

25 BY MR. BENNETT:

1 Q. I think we got up through your education
2 background. And could you tell the court how long you've been
3 employed at BMC?

4 A. I have been with BMC for six years.

5 Q. What kind of firm is BMC?

6 A. BMC is an information management and
7 distribution services firm. We were founded in 1998. We
8 offer services in restructuring, litigation support, M&A and
9 other areas. We currently have 140 employees in ten offices
10 worldwide.

11 Q. Could you take a look at the binder that's in
12 front of you, please, and go to, I guess, tab 2, Debtor's
13 Exhibit 67.

14 Could you tell the court what that is, please.

15 A. Yes. This is a page from the our website, which
16 offers a summary of our services and what we do.

17 Q. And the second page there, if you flip over,
18 where it talks about restructuring services, what is that?

19 A. This is a listing of some of the services we
20 offer to our restructuring clients.

21 Q. And if you flip over to the next page, and
22 there's a list that goes on for a while about clients, could
23 you tell the court what that is.

24 A. Yes, this is a list of our restructuring clients
25 we've had over the course of the time frame since the company

1 has been founded.

2 Q. Okay.

3 MR. BENNETT: We'll offer Debtor's Exhibit 67,
4 your Honor.

5 MR. LEVINE: Your Honor, we object only because
6 it is a document that was offered to the unions outside the
7 scope of the scheduling order, the second amended scheduling
8 order which required that documents, exhibits to be marked be
9 done so by March 9. This document was just recently received.
10 It's one of dozens and dozens of documents that we would have
11 a similar objection to.

12 It's something also that I will represent to the
13 court that I've spoken with Mr. Tambe about and we will try
14 and work out some kind of an amicable resolution outside of
15 court with respect to documents we believe that were in droves
16 provided to us outside the scope of that order.

17 But I do want to, for the record, object to this
18 particular document because it is an example of one of many
19 documents that were just recently served on the union and
20 which could have been served on the unions prior to March 9 in
21 accordance with the scheduling order.

22 THE COURT: This appears to be the most benign
23 of documents. But if you want to stand on your objection,
24 I'll make counsel just walk the witness through the whole
25 thing and we'll be here for weeks.

1 MR. LEVINE: Your Honor --

2 THE COURT: It's okay.

3 MR. LEVINE: No, no, your Honor --

4 THE COURT: Go ahead, examine the witness --

5 MR. LEVINE: No, no, for the record, your
6 Honor --

7 THE COURT: You picked the most benign of
8 documents to make a principle and a point. And if the point
9 is to delay and challenge everybody --

10 MR. LEVINE: Your Honor, I withdraw my
11 objection. That was not my point.

12 THE COURT: I can't think of anything more
13 benign than this two-page document.

14 MR. LEVINE: I am not arguing that it is not
15 benign, your Honor.

16 THE COURT: All right.

17 MR. BENNETT: Assuming that Debtor's 67 is
18 received, without objection, we'll move on.

19 THE COURT: It's received.

20 (Debtor's Exhibit 67, received in evidence, as
21 of this date.)

22 MR. BENNETT: Thank you, your Honor.

23 Q. Could you tell the court in broad terms what you
24 understand of the concept of a virtual data room.

25 A. A virtual data room, VDR, is a secure on-line

1 website where documents are posted and authorized users are
2 able to do their due diligence. We find this to be a very
3 cost-effective and useful means of sharing information to
4 multiple parties when there's multiple documents being
5 engaged.

6 Q. Why would you want to use a virtual data room
7 versus paper exchange of information?

8 A. First and foremost is just ease of use of
9 getting the information. With a paper data room you're forced
10 to bring people to one location with a virtual data room
11 allows you to share information with all parties 24/7.

12 Q. Does BMC have any experience in using data rooms
13 in restructuring and other cases?

14 A. Yes, we've engaged several companies; one would
15 be AT Holdings Corporation, as well as Musicland Holdings
16 Corporation, two recent cases which we've used virtual data
17 rooms.

18 Q. And what about your own experience with virtual
19 data rooms?

20 A. I've set up several as well, most recently being
21 American Commercial Lines in Indiana, Archway Concern, Wells
22 Leaseway Motor Corp., motor car transport company based in
23 Michigan, an auto transport company.

24 Q. What about with regard for the Dana case, could
25 you tell the court what your role has been with regard to

1 virtual data rooms here?

2 A. Yes. My team and I, two full-time parties and a
3 trainer as well as the support groups, began setting up the
4 data, virtual data rooms after we were engaged on the case.
5 BMC initially was hired as a claims noticing and balloting
6 agents, and then we were approached by Jones, Day to set up a
7 virtual data room for them.

8 This was in the spring of 2006. We started
9 setting up a committee site and other sites for them.
10 Subsequently --

11 Q. Okay, go ahead.

12 A. Subsequently, we set up, it was in the summer of
13 2006, we were approached again by Jones, Day to set up a
14 virtual data room in anticipation of this 1113/1114 filing.
15 We proceeded to work with Jones, Day to get documents uploaded
16 very soon thereafter, probably in June of 2006.

17 Q. Was the setup of that virtual data room prior to
18 the formation of the retiree committee?

19 A. I believe that is the case.

20 Q. Okay. Could you tell the court just in summary
21 terms what was involved in populating the data room related to
22 this 1113/1114 proceeding?

23 A. We set up several planning meetings with Jones,
24 Day to go over what they expected, what type of documents they
25 expected to put up there, the types of users they were going

1 to be engaging, and the types of categories and the setting up
2 of what we called the index. It was the folder structure of
3 the virtual data room.

4 Q. Could you tell the court how that index was set
5 up.

6 A. We asked Jones, Day to provide us a document
7 that would outline what their folder structure they looked to
8 see on the site, and once we got it, we started to put that on
9 to the site.

10 Q. Okay. And was there some logic to the groupings
11 of the documents?

12 A. Yes. I mean, there is a very -- structured very
13 much like an outline, A, B, C, there's, each step allows you
14 to set up the index and then, you know have subfolders and
15 whatnot.

16 Q. Okay. Could you tell the court whether there
17 were any confidentiality concerns associated with setting up a
18 data room?

19 A. Absolutely. In every case, confidentiality is
20 very important. That's the reason why data rooms are set up
21 in this manner. Each person invited to the site is given a
22 user name and a password. In this particular case, Jones, Day
23 shared with us that confidentiality was very important and
24 they wanted to ensure that each and every party was given the
25 rights to specific categories and user rights as well.

1 Q. Did you have an understanding of the existence
2 of a confidentiality order in the case?

3 A. Jones, Day did mention that there's a
4 confidentiality order.

5 Q. And the use of this password system, how does
6 that affect confidentiality?

7 A. Well, our system generates a user name and
8 password which is then sent directly to that person's e-mail
9 address. From there, they can use that to log into the
10 system, and only that person can log in.

11 Q. And if you don't have a password --

12 A. If you do not have a password, you cannot access
13 the site.

14 Q. Okay. You mentioned the services of a trainer.
15 Could you tell the court why you had the services of a
16 trainer?

17 A. Yes. Even though the site is very easy to use,
18 as is any new system or software you get, there's a little bit
19 of a training that might be needed. We offer that service to
20 any parties that were -- that wanted it or needed it. We find
21 that once you have that training, it becomes very much easier
22 to use the site.

23 Q. Did any of the parties involved in the 1113/1114
24 proceedings take advantage of the training?

25 A. I'm aware that the retiree committee very soon

1 after they received their invitations to the site requested
2 the training and went through the training. I believe there
3 also was a special session with Mr. Potok.

4 Q. Who is Mr. Potok?

5 A. I believe he's part of the union advisers.

6 Q. Do you know of any representatives of the unions
7 other than Mr. Potok who asked for training?

8 A. I am not aware of any other union
9 representatives that asked for training.

10 Q. Okay. Is there a hotline system associated with
11 this data room?

12 A. Yes. In addition to the training, we offer a
13 24/7 (800) number which any caller or e-mail we get, this
14 group handles it. If there's any issues, typical issues might
15 be, "I've locked myself out of the site." If you attempt to
16 enter a password more than three times, and it's incorrect,
17 you'll be locked. A call -- a phone call will get you
18 unlocked.

19 Q. Is there any mention of this hotline on the
20 access to the data site?

21 A. Yes, the (800) number is listed on the bottom of
22 the site on every page, as well as there's a link to a help.
23 If you click on help they will show you the number.

24 Q. Okay. You mentioned the process in the summer
25 of 2006, before the retiree committee was set up, of

1 populating this data room for the 1113/1114 proceedings.

2 Could you give the court an idea of how many
3 documents were on the site at that point?

4 A. Initially, there were several hundred documents
5 on the site at that time.

6 Q. And could you give the court some idea how many
7 documents have been added to the site thereafter?

8 A. We're up to probably 2,700 documents now, most
9 recently.

10 Q. Okay. Was BMC directly involved in responding
11 to specific information requests from the parties involved in
12 the 1113/1114 proceedings?

13 A. No. At no time was BMC involved in any exchange
14 with any parties asking for specific documents or information
15 from the site.

16 Q. What was BMC's role?

17 A. BMC's role was to take information and documents
18 and instructions from Jones Day as to what to populate on the
19 site, and we did that fully.

20 Q. Okay. Do you have any understanding as to
21 whether the documents that were placed on the site were all in
22 one format, .pdf service, some other format?

23 A. I'm aware that most documents on the site are in
24 the .pdf format.

25 Q. What is .pdf?

1 A. It is a portable document format that allows
2 essentially, locks in the data that's on, that's within that
3 document. So --

4 Q. Is it possible to print out a copy of a .pdf
5 document?

6 A. Yes, you can print out a document.

7 Q. Is it possible to mark a .pdf document with some
8 confidentiality designation?

9 A. Yes, you can.

10 Q. And is that important in any way to
11 confidentiality protection?

12 A. Very much so. One -- that's, one aspect of a
13 virtual data room is that you've lost a sense of control with
14 your documents, and so users -- I mean, our clients would like
15 to at least ensure that when a document is printed, that
16 there's some sort of understanding as to the confidential
17 nature. So we would, we were asked in this particular case to
18 use the -- a watermarking feature of our site that you can use
19 to mark documents as confidential or otherwise.

20 Q. What do you mean by a watermark?

21 A. Well, our system allows it, you know, Jones Day
22 offered to our -- to the users the ability to print their
23 documents. And so much so that, if you -- if you print a
24 document, we wanted to ensure that the document had impressed
25 on it a, the confidential or professional use concepts that

1 Jones Day said was very important.

2 So we feature that, for those documents in .pdf
3 format, we were able to impress upon the document itself a,
4 the name of the user, the time as well as the confidential
5 markings.

6 Q. Were there any requests to produce documents in
7 formats other than .pdf?

8 A. I'm aware that there are less than ten documents
9 that are currently posted through the site that are in other
10 formats, other than .pdf.

11 Q. Could you get to tab 3 in your binder, there,
12 please. And can you tell the court just in summary form what
13 that is.

14 A. This is a usage report that was requested by
15 Jones Day to show the particular users listed here, what their
16 activity was in the site since, from the date that they were
17 given an invitation to the site.

18 Q. Was that put together at your direction?

19 A. Yes.

20 Q. Okay.

21 MR. BENNETT: We'll offer Debtor's 66, please
22 surgeon.

23 MR. LEVINE: Voir dire, please?

24 VOIR DIRE EXAMINATION BY MR. LEVINE:

25 Q. Was this a document that could have been

1 generated before March 9th?

2 A. If requested, I believe, yes, I would.

3 MR. LEVINE: No objection, your Honor.

4 THE COURT: Received.

5 (Debtor's Exhibit 66, received in evidence, as
6 of this date.)

7 DIRECT EXAMINATION BY MR. BENNETT (Cont'd.):

8 Q. And just in terms of the volume of usage that's
9 referenced there, could you let the court know, what are the
10 significant categories here in terms of usage?

11 A. If you look at, there's a, one listing here
12 titled, "Number of documents viewed" through the particular
13 date, it's the middle column there. That's -- shows the count
14 of how many documents were viewed by that particular person
15 through that date from the date that they first logged into
16 the site.

17 In addition, right next to it is the number of
18 documents printed, just, the same concept, the count of
19 documents that were printed.

20 Q. Okay. And just remind the court, what do you
21 think the estimated total volume of documents on the site is
22 at this point?

23 A. Over 2,700.

24 Q. Okay. Were there some users who requested
25 passwords and then never actually viewed any documents?

1 A. Yes. If you look at, I think it's Mr. Doko or
2 Ms. Doyle, in both requests, were sent invitations in
3 November, if you look at the date access granted, invitation
4 sent, and then you'll see that there's no activity for either
5 of those parties, for example.

6 Q. Okay. And then the last part on Debtor's 66 to
7 the right there, you'll see, "Issue description and status."

8 Can you tell the court what that represents?

9 A. Yes. We maintain a log of all parties that
10 either call or send an e-mail to our support group. And part
11 of that is for our own use to make sure that, you know, all
12 issues are taken care of and resolved.

13 Looking at these right here, though, are the
14 issues and descriptions that occurred with these particular
15 parties on this report, and in each case, it was simple issues
16 about, accounts were locked and the issues were resolved.

17 Q. Okay. Last one, now, if you go to tab 1 there,
18 Debtor's Exhibit 4, could you tell the court what that is,
19 please.

20 A. Yes. This is my declaration.

21 Q. And when was that signed?

22 A. I believe it was January 31st.

23 Q. And was that accurate as of January 31st?

24 A. Yes.

25 Q. And the information that you've given today in

1 terms of usage and status of the total volume of materials on
2 the site, is that an update of your declaration?

3 A. Yes.

4 MR. BENNETT: We'll offer Debtor's Exhibit 4 in
5 evidence, your Honor.

6 MR. LEVINE: No objection.

7 THE COURT: Received.

8 (Debtor's Exhibit 4, received in evidence, as
9 of this date.)

10 MR. BENNETT: We have nothing further. Thank
11 you, your Honor.

12 CROSS-EXAMINATION BY MR. LEVINE:

13 Q. Mr. Miller, my name is Bruce Levine from Cohen,
14 Weiss & Simon. We represent UAW and USW. Just a few
15 questions, sir.

16 How many times prior to this occasion, this
17 lawsuit, have you been involved in creating a data room in a
18 situation involving a labor dispute between an employer and a
19 union?

20 A. This particular occasion, this is the first time
21 I've been involved in this setting of data.

22 Q. Have you ever created a data site for a labor
23 union's usage in the past?

24 A. I have not.

25 Q. And when was the last time did you that, to your

1 knowledge?

2 A. Set up a data room for?

3 Q. For the use by a labor union and/or its
4 professionals.

5 A. We have not set up.

6 Q. Mr. Miller, are the data site that was set up
7 for the union and the data site set up for the retirees
8 committee the only data sites that you set up for Dana in this
9 case?

10 A. Are you saying the labor site, are you asking if
11 that's the only one we set up?

12 Q. Correct.

13 A. No, we set up other sites for data.

14 Q. And what other sites have you set up, sir?

15 A. I'm aware that we have set up three other sites.

16 Q. And what sites are those?

17 A. There is a committee site.

18 Q. What is the committee site?

19 A. It's a creditors' committee site.

20 Q. So that is for use by the UCC, correct?

21 A. Yes.

22 Q. And there are two other sites in addition to
23 that?

24 A. Yes, there was a professional-use-only site.

25 Q. And for whose benefit was that site created?

1 A. For professional advisers to parties.

2 Q. To all parties?

3 A. I'm not at liberty -- I don't know which parties
4 were invited to the site and who they represented. I just
5 know what the use of the site was for.

6 Q. Do you know who was invited to the site?

7 A. Not offhand.

8 Q. Were you advised who would be invited to that
9 site when you created it?

10 A. I was not advised. I was told the way it works
11 is, they send us -- they send us e-mail, they say, "Please
12 invite this person to the site and establish this particular
13 user category." That's the extent of our understanding of
14 these parties.

15 Q. And there was a third site that you created in
16 addition to the labor site, correct?

17 A. Yes.

18 Q. And what site was that?

19 A. I'm not sure if I'm at liberty to say.

20 Q. I'm asking you.

21 A. There's -- not every site is available for
22 public disclosure.

23 MR. LEVINE: Your Honor, I would ask that the
24 witness just answer the question.

25 THE COURT: I direct you to answer the question.

1 THE WITNESS: Okay.

2 A. There was a -- it was an OEM site.

3 Q. And that was a site created for OEMs?

4 A. Correct.

5 Q. Without telling me which OEMs or divulging
6 something that you might be -- I'll trust you -- that you
7 might be concerned with and confidential, when was this site
8 created?

9 A. I don't recall.

10 Q. Was it created at the beginning of your
11 retention?

12 A. No, it was after our initial retention in the
13 case.

14 Q. Was it in the spring of 2006?

15 A. I don't recall without checking.

16 Q. Was it created before the so-called labor site?

17 A. Like I said, I do not recall the specific date
18 of when it was created.

19 Q. You don't know whether it was created before or
20 after the union site?

21 MR. BENNETT: Asked and answered, your Honor.

22 Q. Is that your testimony?

23 A. Please repeat your question?

24 Q. Do you know whether the OEM site was created
25 before or after the labor site was created?

1 A. I do not recall.

2 Q. When was the committee site created?

3 A. I do not recall.

4 Q. When was the professional site created?

5 A. I had said that the professional site, or the --
6 sorry, the labor site was created in -- I'm sorry, your
7 question was professional site?

8 Q. I'm sorry, my question dealt with the
9 professional site. When was that created?

10 A. I do not recall.

11 Q. Do you know whether the professional site was
12 created before or after the labor site?

13 A. I believe the professional site was created
14 before the labor site.

15 Q. And -- I forgot whether I asked you, so I'm
16 going to ask you whether you know whether the committee site
17 was created before or after the labor site.

18 A. I believe the committee site was created before
19 the labor site.

20 Q. And do you know why there was a need for the
21 creation of a separate labor site?

22 A. I do not know.

23 Q. You just followed instructions to create an
24 additional site for customers, is that correct?

25 A. That's correct.

1 Q. Do you know if the documents originally put on
2 each of the four sites were identical to each other?

3 A. No.

4 Q. Do you know if there are more .xl documents on
5 the committee site than exist on the labor site?

6 A. I do not know.

7 Q. Do you know if the professional-eyes-only site
8 contains more .xl data than the union site contained?

9 A. I do not know.

10 Q. Do you know if the OEM site contains more .xl
11 data than the union site contained?

12 A. I do not know.

13 Q. Do you know what .xl data is?

14 A. I assume you're referring to .xls documents, .xl
15 documents.

16 Q. I assume that's what I'm referring to. I only
17 know it as .xl.

18 A. Yes, I'm aware of an .xl document.

19 Q. And briefly, tell the court, please, the
20 difference between an .xl, et cetera, document, and a .pdf
21 document.

22 A. An .xl document is a spreadsheet document
23 offered by Microsoft --

24 Q. I didn't hear --

25 A. -- a Microsoft document.

1 Q. And what can you do, if anything, with an .xl
2 document that you cannot do with a .pdf document?

3 A. I believe you can type on an .xl document.

4 Q. Isn't it correct that you can manipulate data on
5 an .xl document whereas, with respect to a .pdf document,
6 you're just looking at a piece of paper that is not subject to
7 electronic manipulation?

8 A. Yes, that is correct.

9 Q. Thank you. Would you please turn to Debtor's
10 Exhibit number 66.

11 MR. LEVINE: This has been received in evidence
12 by this court.

13 Q. And it refers to information, I believe, that
14 you prepared at the request of Jones Day for the purposes of
15 this lawsuit; is that correct? Are you at -- I'm sorry.

16 A. I'm trying to find the document.

17 Q. I'm sorry, it's in --

18 THE COURT: It's the last page.

19 THE WITNESS: Last page, thank you. Oh, yes.

20 A. Yes.

21 Q. Yes, it was created at the request of Jones Day?

22 A. Correct.

23 Q. For this litigation? And when was that request
24 made?

25 A. I believe it was early last week.

1 Q. Now, the individuals who appear to be tracked
2 include two people who I will represent to you are my
3 partners, Babette Ceccotti and Elizabeth O'Leary.

4 Have you been tracking at the request of Jones
5 Day the use of this data site by anybody with access to the
6 site?

7 A. No request for tracking was made by Jones Day.
8 Our system, as a function of its use, the system tracks this
9 information.

10 Q. And was there any discussion at the time that
11 the system was being created about whether the system should
12 be adjusted such that attorneys and perhaps union officials
13 using the site would not be tracked?

14 A. I'm not aware of any discussions.

15 Q. There was certainly no discussion with you,
16 correct?

17 A. Correct.

18 Q. And you are responsible, principally
19 responsible, for creating the site on behalf of Jones Day, is
20 that correct?

21 A. Yes.

22 Q. Now, I just want to go through the columns
23 briefly. "Last name," "First name," "User name," I assume
24 that's the e-mail address of the individual using the site,
25 correct?

1 A. That is correct.

2 Q. The company with -- the company from where the
3 individuals work?

4 A. Yes.

5 Q. "Category, union." I assume that means that the
6 people who are being tracked here are all somehow related to
7 one union or another union in this case?

8 A. That was the category given to us by Jones Day.

9 Q. And Jones Day asked you specifically for the
10 folks using the site from the unions?

11 A. Jones Day specifically gave us this list of
12 users.

13 Q. "Date access granted" and "invitation sent,"
14 that's just when each individual was granted access to the
15 site?

16 A. That is correct.

17 Q. Then there's a column that says, "Date document
18 first viewed."

19 What is that?

20 A. That would be the date that the -- that
21 particular user viewed their first document.

22 Q. And am I to assume therefore that you are able
23 to tell when any individual first touched the site; is that
24 correct?

25 A. That is correct.

1 Q. And you were also able to tell the number of
2 documents each individual reviewed, as I see in the next
3 column; is that correct?

4 A. Yes.

5 Q. And you can even tell the number of documents
6 that each individual printed, is that correct?

7 A. Yes.

8 Q. Are you able to tell -- I don't see it on this
9 sheet -- what specific documents are reviewed by specific
10 individuals?

11 A. We know what documents have been viewed and were
12 printed.

13 Q. Does your recordkeeping include data which would
14 allow you, for example, to determine what documents my
15 partner, Ms. Ceccotti, reviewed? What specific documents?

16 A. Yes, our system tracks usage of that nature.

17 Q. And I assume that was information that you never
18 provided to anybody; correct?

19 A. We never provide it unless requested by the
20 parties.

21 Q. So it had been requested.

22 A. I didn't say that. I said that the system
23 tracks that information.

24 Q. What is the call identification number?

25 A. That is our internal ID for that particular log.

1 Q. And "dates of calls" refer to any call from a
2 user with a problem or for any other reason?

3 A. Yes, that's correct.

4 Q. If you'd turn to your declaration, please, which
5 is, I believe, tab 1 in your binder, paragraph 4; would you
6 let me know when you get there, please?

7 A. Yes, I'm here.

8 Q. Looking at the second sentence, sir, which
9 reads, "At the time in anticipation of their negotiations with
10 the retiree committee and the unions, the debtors had already
11 posted hundreds of responsive documents to the 1113/1114 data
12 room."

13 Do you see that?

14 A. Yes.

15 Q. What do you mean by "responsive documents"?

16 A. Jones Day gave us documents to post to the site
17 and we did so.

18 Q. But they were not responsive to any requests by
19 the union or the retiree committee at the initial setting-up
20 stage, is that correct?

21 A. My understanding is that the documents were
22 responsive to information requests that I was not party to.

23 Q. When was the data site set up, the labor site?

24 A. It was the summer of 2006.

25 Q. And when were the unions first, if you know,

1 advised about the existence of this site?

2 A. I do not know when they were advised.

3 Q. Paragraph 8, please. Bottom of page 5. Last
4 full sentence on that page. Tell me when you're there,
5 please.

6 A. Yes.

7 Q. The November 10th, 2006, do you see that?

8 A. Yes.

9 Q. The November 10th training session was attended
10 by Leon Potok and representatives of Jones Day and BMC, do you
11 see that?

12 A. Yes.

13 Q. And who was there from Jones Day?

14 A. If I recall correctly, I believe it was Josh
15 Weisser.

16 Q. And did you, Mr. Weisser or anyone else who was
17 present at that meeting tell Mr. Potok at that time that he
18 was being watched when he used the data room, or he would be
19 watched?

20 A. I don't recall any conversation of that nature.

21 MR. LEVINE: I have no further questions, thank
22 you.

23 (A pause in the proceedings.)

24 MR. LEVINE: Excuse me, one second. Sorry, your
25 Honor.

1 (Counsel confer.)

2 MR. LEVINE: One more question, please. I'm
3 sorry, Mr. Bennett. I'm sorry, your Honor.

4 Q. If you posted an .xl document, how were you able
5 to maintain security, if at all?

6 A. With an .xl document on our sites, you cannot
7 maintain as the same level of security as you can with a .pdf
8 because the document can be taken off the site and
9 manipulated.

10 Q. To your knowledge, were the same security
11 concerns expressed about the union's usage of documents as was
12 expressed about the UCC's usage of documents?

13 A. I was not party to any conversation about that.

14 MR. LEVINE: Thank you very much. I am
15 definitely finished.

16 REDIRECT EXAMINATION BY MR. BENNETT:

17 Q. Just starting with some of the last things that
18 Mr. Levine asked you about in terms of tracking of requests,
19 is there a privacy policy associated with the data site?

20 A. Yes.

21 Q. Is there a site access agreement associated with
22 the data site?

23 A. Yes.

24 Q. Is that mentioned on the website in the log-in
25 portion of the website?

1 A. It is not only mentioned on the log-in site, it
2 is also mentioned, it is there on every page of the site.

3 Q. For someone to get on to the site and make use
4 of it, do they have to go past the opportunity to view the
5 privacy and security policies?

6 A. Yes.

7 Q. And do you know whether the privacy and security
8 policies mention anything about collection of information by
9 BMC?

10 A. Yes, it does.

11 Q. And does the privacy policy say in part that the
12 BM data room will collect non-public information and that that
13 information may include without limitation contact
14 information, name, e-mail address, zip code, unique
15 identifiers, et cetera?

16 A. Yes, it does.

17 Q. And does the site access agreement say that, as
18 a condition of the user's access to the BMC data room, the
19 user consents to the collection and reporting to the deal
20 owner of all actions taken and all messages sent by user on
21 the deal owner's deal area?

22 A. Yes, it does.

23 Q. And to your knowledge, was there ever a request
24 from any representative of the unions for some exemption from
25 the security policy, privacy and security policy and the site

1 access agreement?

2 A. I'm not aware of any requests.

3 Q. Mr. Levine mentioned access to sites like the
4 creditors' committee site.

5 Do you have any knowledge as to whether the
6 unions have representatives on the creditors' committee?

7 A. I'm not aware.

8 Q. Mr. Levine also mentioned access to the
9 professional-eyes-only site. Do you have any knowledge as to
10 whether Mr. Potok, one of the professionals for the unions,
11 had access to that site?

12 A. No, I can't recall right now whether they do or
13 not.

14 Q. The setup of the site in the summer of 2006, the
15 populating of that site with information, did you have any
16 discussion about the desire to provide information on the site
17 that might be useful to the parties in interest in the
18 1113/1114 proceeding?

19 A. No, I was not party to any of those discussions.

20 Q. Okay. I think the only last point here about
21 .xl, do you have any knowledge of specific requests by union
22 representatives for production of any particular documents in
23 .xl format?

24 A. I'm not aware of any particular requests of that
25 nature.

1 MR. BENNETT: Nothing further.

2 MR. LEVINE: Just one quick question.

3 RECROSS-EXAMINATION BY MR. LEVINE:

4 Q. Just to clarify, if someone from the unions had
5 a request for information, the system wasn't set up for anyone
6 to -- for the unions to come to you, isn't that correct?

7 A. That is correct.

8 MR. LEVINE: No further questions.

9 THE COURT: Thank you, sir.

10 (The witness is excused.)

11 MR. TAMBE: The debtors will call the next
12 witness, Ms. Pilar Tarry. Mr. Jimenez will be examining this
13 area.

14 MR. JIMENEZ: Your Honor, I have a binder for
15 the court and for the witness. May I approach?

16 P I L A R T A R R Y , having been duly sworn, was examined
17 and testified as follows:

18 DIRECT EXAMINATION BY MR. JIMENEZ:

19 Q. Ms. Tarry, where are you currently employed?

20 A. At Alex Partners.

21 Q. And what is your position with Alex Partners?

22 A. I'm a director in the turnaround restructuring
23 services practice.

24 Q. How long have you been with Alex Partners?

25 A. I have been with Alex Partners for

1 seven-and-a-half years.

2 Q. In your employment with Alex Partners, are you
3 currently involved in Dana's Chapter 11 cases?

4 A. Yes.

5 Q. And other than your work on these Chapter 11
6 cases, during your time with Alex Partners, have you had an
7 opportunity to work at --

8 A. Yes. I was the chief restructuring officer at
9 both Atkins Nutritionals, and at Cable and Wireless. And
10 prior to that, I was involved in the cases, most notably Fruit
11 of the Loom, Hayes Lemmerz.

12 Q. Have you had a role in connection with the
13 Debtor's process of Sections 1113 and 1114?

14 A. Yes.

15 Q. What has been that role?

16 A. My role has been the primary point of contact
17 for, to receive information requests from outside parties and
18 to coordinate responses to those information requests.

19 Q. Ms. Tarry, if you could please take a look at
20 tab A in your binder.

21 A. Okay.

22 Q. Do you recognize that document?

23 A. I do.

24 Q. What is it?

25 A. It's the declaration I submitted in support of

1 the 1113/1114 motion.

2 Q. To the best of your knowledge, was the
3 information contained in that declaration correct when you
4 signed it?

5 A. Yes, it was.

6 Q. Could you please briefly describe the process
7 employed to respond to the various information requests that
8 the debtors have received in connection with their 1113/1114
9 process.

10 A. Sure. When Jones Day or Alex Partners would
11 receive an information request, say, from the UAW or the USW,
12 we would first check the virtual data sites that Mr. Miller
13 talked about to ascertain whether those documents already
14 existed on those sites, and if they did, we would coordinate a
15 response through Jones Day, alerting the requesting party to
16 the location of the document.

17 If the documents were not already available on
18 the site, we would work within the -- I would work with the
19 debtors and our Alex Partners team and Jones Day to ascertain
20 whether any responsive documents did exist, and if they did
21 exist, we would provide them to the requesting party and go
22 ahead and post them to the sites as we assumed other people
23 would also want similar information.

24 Q. When you say "the site," which site in
25 particular were those documents posted to?

1 A. I think we're calling it the labor site.

2 Q. With respect to the two unions, the UAW and the
3 USW, approximately how many information requests did debtors
4 receive from these unions?

5 A. Seven as of Friday.

6 Q. Ms. Tarry, if you could take a look at
7 Exhibits B through H in the binder in front of you. And let
8 me know once you've finished looking at those documents.

9 (A pause in the proceedings.)

10 A. Okay.

11 Q. Do you recognize these documents?

12 A. Yes.

13 Q. What are they?

14 A. They are the information requests we received
15 from the USW, the UAW and/or their advisers.

16 Q. Was the same process you just described for
17 responding to information requests used with respect to these
18 requests received from the unions?

19 A. To the best of my knowledge, yes, it was.

20 Q. How many documents would you estimate have been
21 provided to the two unions directly or made available on the
22 data site?

23 A. Currently, there are 4,100 documents on the data
24 site for the unsecured creditors committee. There are also
25 2,700 documents, I think that's right, on the labor site, the

1 virtual data site created for these 1113/1114 process, and the
2 unions, both unions and their advisers have access to both of
3 those sites.

4 Q. So the two unions and their advisers have access
5 to the creditors' committee site?

6 A. That's my understanding, yes.

7 Q. Do you have any understanding whether the two
8 unions have access to the, what's called the
9 professionals-only site?

10 A. I do not believe they have access to the
11 professional-eyes-only site.

12 Q. Do you have any understanding why the two unions
13 do not have any access to that site?

14 A. My understanding of why they don't have access
15 to that site -- well, my understanding why the unions don't
16 have access to that site is, it's for the professionals of the
17 committee to designate documents that we may not want
18 committee members to see for various reasons but we're willing
19 to share with their professionals.

20 The reason that the union's advisers do not have
21 access to that site is, in my understanding, because the terms
22 of the confidentiality agreement with the union advisers does
23 not match the terms of the confidentiality agreement with the
24 unsecured creditor committee advisers.

25 Q. Could you briefly describe the types of

1 information that have been made available to the two unions.

2 A. Sure. Briefly. Um -- we have -- the debtors
3 have provided a substantial amount of information, just in
4 some general categories. They have provided information about
5 the employee benefit plans, and summary plan descriptions.
6 They have provided actuarial information provided to us by
7 Towers Perrin and supporting detailed schedules regarding
8 those -- those valuations. They have provided head count
9 information, organization charts, 2005 hourly and salaried
10 wage and fringe information by location. We've now just
11 provided the 2006 hourly wage and fringe information by
12 location.

13 They have provided historical financial
14 information, including, for example, consolidating P&L and
15 balance sheets, going back as far as 2004. They have provided
16 the DIP information about our loan credit facilities, cash
17 flow forecasts, variance reports to the cash forecast,
18 discussions of budget to actual plans for the 2006 months;
19 they have provided forecast information for 2007, including
20 the base, what we call the base case, the plus plan, and the
21 DIP budget supplement, which -- I could say what those are if
22 I needed to. But -- and also, supporting detail and
23 assumptions regarding those plans.

24 They have provided detailed information
25 regarding the restructuring initiatives, including the

1 footprint optimization initiative. We've provided detail in
2 our intercompany transactions, information about our
3 non-debtor subsidiaries operations, market share information,
4 competitor information, information on a repatriation plans on
5 our non-U.S. financings -- I could keep going, I guess.

6 But is that --

7 Q. Well, there were some questions yesterday
8 regarding specific documents and whether or not these
9 documents have been produced to the unions. I'd just like to
10 ask you your understanding on whether or not these documents
11 have been provided.

12 A. Okay.

13 Q. The 2007 base plan?

14 A. The 2007 base case, which is the 2007 plan
15 without the restructuring initiatives was provided on December
16 8th, and -- in a call with the unions and others. It was also
17 provided, more information was provided on that plan on
18 December 14.

19 Q. The 2007 DIP budget supplement, do you know if
20 that document was provided to the unions?

21 A. Yes, the DIP budget supplement was provided to
22 the unions on January 3rd.

23 Q. The 2006 pro forma, do you know if that was
24 provided to the unions?

25 A. The 2006-2007 pro forma, well, I can't tell you

1 how early they got it. They had it by no later than November
2 29th. I was present at a meeting where we handed out that
3 detailed analysis supporting that.

4 Q. There were also some questions yesterday,
5 Ms. Tarry, regarding whether the backup information related to
6 the labor savings associated with the five plans that are
7 still part of the 1113 motion, whether the unions have been
8 provided any backup information with respect to those savings.
9 Are you aware whether the debtors have made such information
10 available?

11 A. Yes. I believe you're referring to the
12 Exhibit 72 that was discussed, that totaled to the 28 million,
13 is that --

14 Q. Correct.

15 A. -- what you're thinking of? Okay. Yes, I think
16 the cost sheets that I think Mr. Bueter explained were the
17 basis for that 28 million dollar roll-up, the USW cost sheets
18 were provided to Jim Robinson by Chris Bueter's group in late
19 January. That would be for Fort Wayne, Marion and Henderson.

20 The slightly updated terms sheets or cost sheets
21 for those three plants and for Elizabethtown, Auburn Hills
22 and -- well, Robinson and -- were all provided on March 7th.
23 I was copied on that distribution.

24 Q. To the best of your knowledge, have the debtors
25 been able to respond to each of the information requests

1 received from the two unions?

2 A. For the most part. We have a three, I believe
3 three items that are, we have not been able to respond to yet
4 from the March 8th request. I think everything before that
5 has been satisfied. Which, the March 8th request and the
6 March 23rd were the last two. The March 23rd we received
7 Friday.

8 That request we're now working on. It included
9 some follow-up questions for the things we provided from the
10 March 8th request and it adds some new requested items.

11 I believe the things that were not responded to
12 are some information about assets of specific facilities, some
13 information on process savings, and some information on our
14 non-globally-managed production purchasing spend, which they
15 would like some detail on. We are in the process of providing
16 that.

17 Q. What other efforts have the debtors engaged in
18 to provide information to the two unions?

19 A. We have participated in conference calls with
20 Mr. Potok and his team related to the information requests.
21 We have invited the unions and their -- well, they are
22 invited, and their advisers, to participate in the periodic
23 calls and updates. We've had meetings that we have with the
24 committees, the official committees. We've also met with
25 Mr. Potok and his team individually to respond to certain of

1 their requests.

2 Q. Just so the record is clear, who is Mr. Potok?

3 A. Leon Potok from -- I apologize. Potok &
4 Company?

5 Q. And what is --

6 A. They are the financial advisers to the UAW and
7 the USW. That's my understanding.

8 Q. Any other detail you can provide on the various
9 calls you've had with Mr. Potok or members of his staff?

10 A. The individual calls we've -- that we've had
11 with Mr. Potok at his staff, sure. We -- we did a two-day due
12 diligence meeting in Toledo. Mr. Potok and his team visited
13 Toledo. During that two-day period, they met with the
14 management group of our heavy-vehicle traction, torque and
15 structures product groups to get an overview of their product
16 groups and their operations and their sort of view of 2007.

17 They also met with, at their request, other
18 individuals from the debtors to answer their questions about
19 repatriation and their questions about the financial statement
20 consolidation.

21 They met with Mike Burns for a time, who shared
22 with them, I think, his outlook for the company and sort of
23 his vision and thoughts on the company and the plan. They did
24 a follow-up call on the 28th with Paul Miller, the head of our
25 supply chain at his request, at Leon's request, to answer

1 their questions about supply chain and purchasing and vendor
2 relationships.

3 We also, Alex Partners also spent some time with
4 Leon and we, took, I think mapped out a process for getting
5 them due diligence information on our footprint initiatives.
6 And in connection with that process, we did a conference call
7 with his team on the 23rd of February, where we took him
8 through a detailed analysis of the traction footprint
9 optimization plan.

10 We did a follow-up call with them on March 12th
11 to take them through a similar analysis for torque, and also
12 to answer his questions on the assumptions in traction and to
13 review with him some additional scenarios that he had asked us
14 to run related to the traction plans.

15 That's substantially the meetings.

16 Q. A few minutes ago, Mr. Levine asked Jeff Miller
17 some questions regarding .xl documents and whether or not
18 there are any .xl documents available on the, what they call
19 the labor site.

20 Are you aware whether any documents in .xl
21 format have been produced to the unions or their advisers?

22 A. Yes. In the March 8th request, Mr. Potok asked
23 for certain documents in .xl form and we did provide those
24 documents in .xl form. Those would include the DIP budget
25 supplement, which is essentially 2007 plus plan, that also

1 includes some of the detail analysis about our fixed and
2 variable cost projections.

3 We've also provided the 2007 base case P&Ls in
4 consolidating form in .xl to Mr. Potok, as well as the 2004
5 through 2006 consolidating financial statements. Those are
6 all in .xl.

7 MR. JIMENEZ: Your Honor, at this time I'd move
8 Debtor's Exhibit 7, the declaration of Pilar Tarry into
9 evidence.

10 MR. LEVINE: No objection.

11 THE COURT: Received.

12 (Debtor's Exhibit 7, received in evidence, as
13 of this date.)

14 MR. JIMENEZ: No further questions, your Honor.

15 MR. LEVINE: May I have one minute, your Honor?
16 Thank you, your Honor.

17 (A pause in the proceedings.)

18 CROSS-EXAMINATION BY MR. LEVINE:

19 Q. Ms. Tarry, I promise to keep to the lawyer's
20 pledge that is often not kept and that is that I'll be brief.

21 I would like to look at your declaration which I
22 believe is tab A. Are you there?

23 A. Yes.

24 Q. Just looking at your background, this is not
25 your first 1113/1114 proceeding that you've worked on, is that

1 correct?

2 A. No, this is the first time I've worked on
3 1113/1114 proceedings specifically.

4 Q. But it's not the first time that you've worked
5 on behalf of a company that had some kind of a labor dispute
6 with a labor union, is that correct?

7 A. No, this is the first one that's had union labor
8 dispute.

9 Q. Oh, it is. Okay. And what experience, if any,
10 have you had with respect to labor relations matters?

11 A. Labor relations specifically?

12 Q. Yes.

13 A. None.

14 Q. Would you turn, please, to page 9 of your
15 declaration and specifically, paragraph 20, and I am at the
16 second sentence there, do you see that?

17 A. Um-hum.

18 Q. It reads, "In conjunction with those
19 negotiations, the UAW has requested copious information which,
20 while technically outside of the 1113 process, demonstrates
21 that the UAW is well informed as to the nature of Dana's
22 financial situation."

23 Now, do you stand by that statement?

24 A. Yes.

25 Q. And what is the basis upon which you have opined

1 here that the UAW has requested copious information which is
2 technically outside of the 1113 process?

3 A. Conversations with Mr. Bueter and a little bit
4 of the 11/30 request.

5 Q. 1113 request?

6 A. The request dated 11/30 that they submitted.
7 It's under tab B.

8 Q. So you were advised by others that the
9 information was outside of 1113. That is not your own
10 judgement, is that correct?

11 A. No, advised by Jones Day that it was outside of
12 1113.

13 Q. So that was a legal conclusion that had been
14 conveyed to you; correct?

15 A. Correct.

16 Q. Thank you. Now, you said that a number of .xl
17 documents have been provided to the unions.

18 A. That's correct.

19 Q. And I believe you mentioned the DIP budget
20 supplement.

21 A. That's correct.

22 Q. And when was that provided?

23 A. In .xl?

24 Q. .xl, correct.

25 A. On March 19.

1 Q. And when was that provided to the UCC in .xl
2 format?

3 A. I wouldn't know that.

4 Q. It was provided to the UCC, was it not?

5 A. It was provided to the UCC. I don't know if it
6 was provided in .xl at any point.

7 Q. Do you know when the union was provided with
8 detailed information, I believe you described in terms of
9 fixed and variable costs of the debtor, do you know when that
10 information was provided in .xl format?

11 A. The information I'm speaking of has not been
12 provided to the UCC in .xl format.

13 Q. I'm asking when it was provided to the unions.

14 A. Oh, I'm sorry, the unions. On March 19th.

15 Q. And the 2007 base case, when was that provided
16 in .xl format to the unions?

17 A. I don't believe I said that that was provided in
18 .xl. I'm not sure that it actually was.

19 Q. I'm sorry, I had that written down that way, as
20 one of the items. I may have misheard you.

21 A. Oh, no, no, no. I didn't say that. I don't
22 think I said that.

23 Q. I --

24 A. It may have been, but I don't know that it has
25 been.

1 Q. And the consolidated financials for 2004 and
2 2006, when were they provided in .xl format?

3 A. I cannot tell you exactly when they were
4 provided, but they were provided by February 26th and 27th,
5 when Mr. Potok's team was in Toledo.

6 Q. And do you know when the motion was filed in
7 this case?

8 A. January 31st, I believe.

9 Q. You testified about information that was
10 provided to, I guess, Mr. Potok on or about March 7th. Could
11 you tell the court, again, or for my benefit, what information
12 specifically that you're talking about?

13 A. I'm talking about the cost, what we call the
14 cost sheets which show and support the asks at the various
15 union facilities over the first three years in detail. Those
16 cost sheets were provided to him on the 7th for Marion,
17 Auburn -- I'm sorry, Auburn Hills, Marion, Pottstown,
18 Henderson, Elizabethtown, Robinson.

19 Q. And is that information that you're talking
20 about, would you turn, please, to, I think it's tab, or it is
21 tab D in your document looseleaf binder. Are you there?

22 A. Um-hum. I am.

23 Q. Is that information responsive to item number 10
24 in that information request from Potok & Company dated
25 November 20th, 2006?

1 A. I'm sorry, repeat the question?

2 Q. Is the information that was provided on March,
3 or on or about March 7, responsive to the request set forth in
4 paragraph number 10 of Mr. Potok's information request dated
5 November 20th, 2006?

6 A. It is.

7 Q. Okay. And that was before the motion in this
8 case was filed, is that correct? The 1113/1114 motion?

9 A. I'm sorry, say your question again?

10 Q. Withdrawn. I just want to go through summarily
11 with you the process through which one requests information.

12 Does the request go to you or has the request
13 gone to you specifically from Mr. Potok or another
14 representative of the union?

15 A. Certain requests have come directly to me. But
16 most of the time, they go from Mr. Potok to Jones Day or to
17 Mr. Bueter, who then pass them to me.

18 Q. If a request comes to you specifically at the
19 threshold, what, if anything, is your role?

20 A. If the request comes to me, I distribute the
21 request to Jones Day and to the appropriate people inside Dana
22 who may have responsive documents for that request. Then --

23 Q. What happens next?

24 A. Well, at that point, we would, as I said, look
25 at the data site that's -- and see if that document already

1 existed and if it did, I would work with Jones Day to prepare
2 a letter notifying the requesting party of the location of the
3 document.

4 If the document is not already on the site, I
5 would then work with the company to determine if the document
6 existed that was responsive, and if it did, we would then
7 provide that document to the requesting party and have it
8 posted on the site.

9 Q. Is that essentially the same procedure used for
10 requests made by representatives of the UCC?

11 A. My role is to provide information to all the
12 parties, including the UCC, related to 1113/1114. So if it
13 related to 1113/1114, yes, that's the process.

14 Q. And if it did not relate to 1113/1114, what is
15 the process?

16 A. I don't handle those requests.

17 Q. Who handles those requests?

18 A. Others from the Alex Partners team.

19 Q. Were you involved in the original determinations
20 as to what documents should be placed on the various sites
21 that had been discussed this morning, that is, the site for
22 the UCC, the professional-only site, and the labor site?

23 A. Not the UCC and the professional-only site.

24 Q. You testified previously that the union's
25 adviser was not entitled to have access to the

1 professional-only site, is that correct?

2 A. I don't think I said he wasn't entitled to it.

3 Q. Is it correct that he is not entitled to review
4 documents in the professional-only site?

5 A. I'm not sure I know what "entitled" means.

6 Q. Has Mr. Potok, to your knowledge, asked for
7 permission to have access to that site?

8 A. Yes.

9 Q. And has that access been granted?

10 A. No.

11 Q. And why is that?

12 A. It's my understanding, again, that the
13 confidentiality agreement with Mr. Potok contains different
14 language regarding professional-eyes-only designations than
15 does the confidentiality agreement with the unsecured
16 creditors' committee advisers.

17 Q. And who, if anyone, to your knowledge was
18 responsible for communicating that reason to Mr. Potok for
19 denying his access to the professional-eyes-only site?

20 A. I told him that directly but then referred him
21 for additional conversations to Jones Day.

22 Q. Was that your decision or was that a decision
23 made by Jones Day?

24 A. I'm not sure who decided.

25 Q. When you told Mr. Potok he couldn't look at the

1 site, was that a decision that you, yourself, made or did you
2 have to check with anybody?

3 A. I checked with Jones Day.

4 Q. And it was on that basis that you communicated
5 to Mr. Potok that he, on behalf of the union, would not be
6 able to look at that site, is that correct?

7 A. That's correct.

8 Q. Now, to your knowledge, the unions, as you said,
9 are participants on the unsecured creditors' committee, right,
10 members of that committee?

11 A. That's correct.

12 Q. And Mr. Potok does not represent the creditors
13 committee, is that correct?

14 A. That's correct.

15 Q. And the labor site was created for a purpose, to
16 your understanding, isn't that correct?

17 A. That's correct.

18 Q. As distinguished from the UCC site, isn't that
19 correct?

20 A. Yup.

21 Q. And the UCC has its own professional
22 representatives; isn't that correct?

23 A. Yes.

24 Q. Including Mr. Talarico over there, isn't that
25 correct?

1 A. I've never actually seen Mr. Talarico, but I've
2 heard the name, so if that's indeed him, yes.

3 Q. As a professional, you would expect to look at
4 that site on behalf of the UCC, correct?

5 A. To look at the --

6 Q. The UCC site?

7 A. We would look at the UCC site, yes.

8 Q. And was Mr. Potok told, to your knowledge, at
9 any time that, in addition to the labor site that we're
10 creating especially for this 1113/1114 proceeding, you might
11 also go over to another site that is created, that has
12 different information?

13 Do you know if he was ever told that?

14 A. Not by me. I don't know if he was ever told
15 that.

16 MR. LEVINE: I have no further questions.

17 MR. TAMBE: May we just have a minute?

18 (Counsel confer.)

19 MR. JIMENEZ: Your Honor, just a couple of quick
20 questions.

21 REDIRECT EXAMINATION BY MR. JIMENEZ:

22 Q. Ms. Tarry, you testified a few minutes ago
23 regarding providing the 2007 DIP budget supplement and fixed
24 and variable costs, both in .xl format on March 19th, do you
25 remember that?

1 A. Yes.

2 Q. Was that information previously provided to the
3 union or its advisers in some other format before March the
4 19th?

5 A. Yes, it was provided in -- the DIP budget
6 supplement was provided on January 3rd in .pdf format.

7 Q. And why did you provide the 2007 DIP budget
8 supplement in .xl format on March the 19th?

9 A. Because he asked for it.

10 Q. And with respect to the fixed and variable
11 costs, do you recall when that was first provided?

12 A. It was first provided on March 19th, after he
13 asked for it on March 8th.

14 Q. And that was provided in .xl format as well?

15 A. Yes.

16 MR. JIMENEZ: Nothing further, your Honor.

17 RECROSS-EXAMINATION BY MR. LEVINE:

18 Q. Do you know why Mr. Potok made those requests in
19 March and not earlier?

20 A. No.

21 MR. LEVINE: No further questions.

22 THE COURT: Thank you.

23 (The witness was excused.)

24 MR. TAMBE: Your Honor, Mr. Hamilton will be
25 calling the next witness.

1 MR. HAMILTON: Your Honor, my name is Robert
2 Hamilton. I'm from the Columbus, Ohio office of Jones Day and
3 I'd like to call our next witness, who is Dr. Janemarie
4 Mulvey.

5 I have witness notebooks that I can bring to the
6 witness stand and to your Honor.

7 THE COURT: Please.

8 J A N E M A R I E M U L V E Y , having been duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION BY MR. HAMILTON:

11 Q. Dr. Mulvey, where are you currently employed?

12 A. I'm currently employed at the College of
13 American Pathologists.

14 Q. If I could ask you to open your witness notebook
15 to tab A, which has Debtor's Exhibit 5 behind the tab, are you
16 there?

17 A. I'm there.

18 Q. Can you tell the court what this document is?

19 A. This is my declaration and my resume.

20 Q. If I can ask you, in your declaration, which is
21 Debtor's Exhibit 5, to turn to the end, appendix 1, which is
22 right after page 28 of the declaration, are you there?

23 A. Yes, I'm there.

24 Q. Can you tell the court what appendix 1 is?

25 A. That's my resume.

1 Q. Does it accurately describe your background?

2 A. Yes, it does.

3 Q. If I can, I'd like to bring to the court's
4 attention just a few of the items in there that may be
5 relevant to consideration of your testimony today.

6 After you received your masters in economics
7 from the University of Maryland in '85, did there come a time
8 when you started working at the American Association of
9 Retired Persons in Washington, D.C.?

10 A. Yes, I worked with the American Association of
11 Retired Persons beginning in 1989.

12 Q. About how many years were you there?

13 A. About four-and-a-half.

14 Q. During those four-and-a-half years at the AARP,
15 what did do you there?

16 A. Well, it was during the era of the Clinton
17 administration and healthcare reform was a very important
18 topic. So I played an integral role in the development of
19 AARP's healthcare reform proposal, which included expanding
20 Medicare to the pre-65 population. I also represented AARP on
21 certain federal advisory commissions with respect to health
22 and retirement issues.

23 I wrote testimony for retirees for when they
24 testified before Congress. One of those included looking at
25 pension coverage of women. And I also provided

1 recommendations and analysis to the Social Security
2 Administration on tax burdens of the elderly.

3 Q. After you were at the AARP, did there come a
4 time when you then went to the Urban Institute?

5 A. Yes.

6 Q. How long were you at the Urban Institute?

7 A. Approximately two years.

8 Q. And what is the Urban Institute?

9 A. The Urban Institute is a nonprofit research
10 organization. People call it a think tank.

11 Q. What did you do there?

12 A. One of my main roles was to develop economic
13 models to look at state healthcare reform proposals and the
14 cost of those proposals. And then that information was used
15 to advise state legislators and state governments on their
16 respective reform proposals.

17 Q. Who was asking the Urban Institute to provide
18 that information?

19 A. The state governments or the state legislatures.

20 Q. Did you have occasion at the Urban Institute to
21 do research into out-of-pocket spending by the elderly on
22 healthcare?

23 A. Yes. Also, while I was there, I did an
24 extensive study on the out-of-pocket spending among the
25 elderly for AARP. I also coauthored a book on the future

1 viability of the Medicare program.

2 Q. When you say on behalf of AARP, was AARP a
3 client of the Urban Institute at that time?

4 A. They contributed funding.

5 Q. So while you were at the Urban Institute you
6 were doing research for the AARP?

7 A. Yes.

8 Q. All right. And then, as I understand it from
9 August of '95 through the early part of 2000, you were at the
10 Center For Health Policy Studies and American Council of Life
11 Insurers, is that right?

12 A. Correct.

13 Q. What were you doing there?

14 A. At the Center For Health Policy Studies, I
15 helped large employers look at ways to contain their
16 healthcare costs, largely through negotiating premiums and
17 bundling payments. At the American Council of Life Insurers,
18 I worked on pension and long-term care issues, and my research
19 on long-term care focused on future needs of the baby boomers
20 and it led to an invitation to testify before the Senate aging
21 committee and ultimately led to the enactment of a long-term
22 care insurance program for federal employees.

23 Q. So at these two places, were you working at the
24 request of or for the benefit of retirees and the elderly or
25 for the large employers at that time?

1 A. For the federal health policy studies, it was
2 employers. And the American Council of Life Insurers, it was
3 for life insurers.

4 Q. All right. And then, in early 2000, as I
5 understand it, you went to a company called Watson Wyatt
6 Worldwide, is that correct?

7 A. That's correct.

8 Q. What is Watson Wyatt?

9 A. Watson Wyatt is an actuarial consulting firm. I
10 was in the research department.

11 Q. What good did you do there?

12 A. I basically conducted surveys of employee
13 benefit issues. And I used that information from the surveys
14 to educate large employers regarding the changing nature of
15 the pension benefits and retiree health benefits. That
16 education included both written reports and I also presented
17 the findings at numerous industry symposiums where VPs of HR
18 would attend, similar to Bob Arquette from Dana Corporation.

19 Q. These symposia, who was attending these
20 symposia?

21 A. VPs of HR.

22 Q. For --

23 A. Large employers.

24 Q. And then, did you also have occasion to publish
25 your research?

1 A. Yes. I published a lot of my research in
2 peer-reviewed journals, I also published it in reports for
3 Watson Wyatt.

4 Q. When did you leave Watson Wyatt?

5 A. I left Watson Wyatt in, I'm sorry, January 2005.

6 Q. Okay. And you started at the Employment Policy
7 Foundation?

8 A. Correct.

9 Q. What was your title there?

10 A. I was president and chief economist.

11 Q. What did you do there?

12 A. The Employment Policy Foundation provided
13 research to large employers. We had about 75 contributors,
14 and basically, that research focused on the nature of their
15 retirement and healthcare benefits.

16 Q. Did you have occasion to write a book while you
17 were there?

18 A. Actually, yes. I wrote a book on the changing
19 nature of the employer-provided benefits. I also testified
20 before both the House and the Senate committees. On the House
21 side, I focused on President Bush's pension administration
22 reform proposals; and on the Senate side, I had done some
23 research on family medical leave and testified about that
24 research.

25 Q. And then I guess, later in 2005, you joined the

1 College of American Pathologists, is that correct?

2 A. Correct.

3 Q. What is that College of American Pathologists?

4 A. The College of American Pathologists is a
5 membership organization of pathologists and we basically
6 provide advocacy support. We lobby the Federal Government and
7 federal regulators to make sure that physicians are paid
8 adequately.

9 Q. What are pathologists?

10 A. Pathologists are doctors that are in the labs
11 that diagnose disease, they diagnose cancer, they also do
12 autopsies.

13 Q. And what was the kind of work you did, you're
14 doing at the College of American Pathologists?

15 A. I conduct surveys of pathologists regarding
16 their compensation and benefits.

17 Q. Why do you do that?

18 A. Those surveys are used to help pathologists
19 negotiate their reimbursement rates with hospitals.

20 Q. What else do you research?

21 A. I also look at workforce issues and most
22 recently, I've been looking, working with, doing an analysis
23 of how physicians are paid under Medicare and providing
24 recommendations to the Medicare agency that we administer, CMS
25 it's called, and how physicians should be paid and alternative

1 formulas for paying under Medicare.

2 Q. So for the past 18 years, then, you've worked on
3 employee and retiree healthcare benefits from a number of
4 different perspectives, is that correct?

5 A. Yes. I've actually had a very unique
6 perspective on health care. At AARP and Urban Institute, I
7 followed healthcare at the retiree perspective. At Watson
8 Wyatt, the Employment Policy Foundation and that Center for
9 Health Policies, I looked at the employer perspective, and now
10 I'm actually working on the provider side.

11 MR. HAMILTON: Your Honor, I would tender as an
12 expert on -- for employees and retirees, Dr. Janemarie Mulvey.

13 MS. CECCOTTI: No objection, your Honor.

14 THE COURT: So qualified.

15 MR. HAMILTON: Thank you, your Honor.

16 Q. Dr. Mulvey, over the past 18 years that you've
17 been studying, publishing research and testifying before
18 Congress on the subject of employer provided healthcare
19 benefits, have you observed a trend among large employers in
20 this country with respect to retiree health care benefits?

21 A. Yes, I have.

22 Q. What is that trend?

23 A. Over time, more and more large employers are
24 either significantly reducing or completely eliminating the
25 provision of healthcare to retirees.

1 Q. And if you could speak a little bit closer to
2 the microphone so everybody in the back can hear you. What
3 are the factors that are contributing to this trend?

4 A. There's a number of factors. One of the key
5 factors is, in 1993, the government instituted new accounting
6 rules, and what these accounting rules did was to require
7 employers to not only report their current retiree healthcare
8 liabilities, but to project forward their future retiree
9 healthcare liabilities and record those on their balance
10 sheet.

11 What this did was essentially expose these
12 liabilities to stockholders and potential investors. And
13 these liabilities were quite large.

14 Q. Okay. In addition to the accounting rule
15 change, what other factors are contributing to the trend of
16 employers getting out of the business of retiree health care?

17 A. Another key factor is, the economy has become
18 increasingly globalized, and our health care costs in the
19 United States have risen far faster than our foreign
20 competitors. And this is especially important for employers
21 because in the United States, the nature of employer-sponsored
22 coverage means that employers disproportionately bear those
23 costs where, among many of our foreign competitors, it's a
24 national healthcare program and therefore, those costs are
25 borne across all taxpayers.

1 Related to that is the issue that the aging baby
2 boomers in the United States is unique to the United States
3 and our European counterparts, but our lower-cost competitors
4 like India and China are not facing the same aging population
5 that we are; in fact, they have a relatively young population.

6 Q. What is the effect of Asia and India having a
7 younger population on retiree healthcare costs?

8 A. What all this means is that to compete
9 effectively with our, against foreign firms, our labor costs
10 are much higher than them and we're not able to --
11 disadvantage us with respect to how we compete with them. But
12 the bottom line is that firms have realized that they have to
13 start shedding their retiree healthcare liabilities in order
14 to compete effectively.

15 Q. How are large employers going about the business
16 of shedding their retiree healthcare costs in the United
17 States?

18 A. They are following three key steps.

19 Q. What's the first step?

20 A. Well, actually, they are following three key
21 steps in this process and where they are in the process really
22 depends on their financial viability.

23 Q. What's the first step?

24 A. The first step is that they are eliminating
25 coverage for new hires.

1 Q. When you say "coverage," what do you mean?

2 A. The provision of retiree health benefits for
3 employees who are newly hired.

4 Q. And when they eliminate that, what does that
5 mean to the new hire?

6 A. That basically means the new hire would be
7 employed without coverage, and it would reduce the number of
8 future retirees that have coverage.

9 Q. Can you give the court an approximate ballpark
10 of what the percentage is of large employers in this country
11 that have eliminated the provision of retiree benefits to new
12 employees?

13 A. Well, the data show that the vast majority of
14 employers, about 80 percent, do not now cover new hires, do
15 not now provide coverage for retiree health for new hires.

16 Q. What would be the second step that some large
17 employers are taking to get out of the business of retiree
18 healthcare?

19 A. The second step is, employers are eliminating
20 coverage for active workers.

21 Q. Okay. If I could ask you to open your witness
22 binder again, and turn to tab B, which is Debtor's Exhibit 31.

23 A. Okay.

24 Q. Can you tell the court what this document is.

25 A. This is the Kaiser Family Foundation annual

1 employer healthcare benefit survey and this is the 2006
2 report.

3 Q. What is the Kaiser Family Foundation?

4 A. The Kaiser Family Foundation is a nonprofit
5 organization. It is not a consulting firm. And its mission
6 is to provide information on healthcare costs and trends to
7 the media, legislators and the public.

8 Q. How long has the Kaiser Family Foundation been
9 doing this annual survey?

10 A. It's been doing the survey for quite a while,
11 about twenty years.

12 Q. Is this considered an authoritative source for
13 documenting trends in employer health benefits in this
14 country?

15 A. Yes, it is.

16 Q. Is this the entire survey or just portions of
17 it?

18 A. What you see here is the executive summary of
19 the survey and the chapter on retiree healthcare benefits.

20 Q. So if you turn to the page halfway, or to the
21 page halfway to the middle of the exhibit that has all the
22 black on it, so section 11, what is that section?

23 A. This is the section on retiree healthcare
24 benefits.

25 Q. The rest of the document deals with other

1 healthcare benefits, not retirees?

2 A. Correct.

3 Q. If we go to that Section 11, if I could ask you
4 to turn to page 133 of section 11, which has a big bar graph
5 on --

6 A. Yes, I'm there.

7 Q. Would you tell the court what that bar graph
8 represents.

9 A. Well, as I was saying earlier, step 2 of the
10 process was to eliminate retiree health benefits for active
11 workers. And what this graph shows is that in 1988, 66
12 percent of large employers had retiree health benefits for
13 active workers; today, only 35 percent of large employers, so
14 it shows the trend away from retiree healthcare benefits.

15 Q. And let's make sure because it's easy to get
16 confused here when you start making distinctions between
17 active employees and current retirees. Does this chart
18 reflect who is providing retirement benefits to current
19 retirees and who is not?

20 A. Its does include some of the those firms who may
21 be providing benefits to current retirees but it's largely
22 focused on active workers.

23 Q. So when it says at the top, it's among firms
24 that are offering health benefits to active workers, it's
25 referring to the active employees who will be entitled to

1 retiree benefits when they retire in the future; is that
2 right?

3 A. Correct.

4 Q. And the 66 percent figure in 1988 reflects what
5 in 1988?

6 A. This means that in 1988, 66 percent of large
7 employers offered retiree health benefits to their active work
8 force.

9 Q. And in 2006, that numbers is?

10 A. Thirty-five percent.

11 Q. A little over a third.

12 A. A little over a third.

13 Q. Are you familiar with the expert declaration
14 that was filed by Suzanne Taranto for the unions in this case?

15 A. I am.

16 Q. If I could ask you to turn to tab E in your
17 witness notebook.

18 A. Okay.

19 Q. Is this the expert report that Suzanne Taranto
20 filed?

21 A. Yes.

22 Q. I'd ask you to turn to page 4, paragraph 9 of
23 Ms. Taranto's expert report.

24 A. Yes.

25 Q. And in you'll see there in the second sentence

1 of paragraph 9, can you read that sentence, please, out loud,
2 slowly?

3 A. It says, "A Kaiser Family Foundation 2005 survey
4 indicated that 60 percent of employers with more than five
5 thousand employees offered post-retirement medical coverage."

6 Q. All right. That sentence appears to be
7 inconsistent with what you just told the court. Is it?

8 A. No, it's not.

9 Q. All right. Now, it's referring to the Kaiser
10 Family Foundation 2005 survey, is that correct?

11 A. Correct.

12 Q. And the one that's in your notebook is the 2006
13 survey, is that correct?

14 A. Correct.

15 Q. Why is her statement here not inconsistent with
16 what you just told the court about, two-thirds of large
17 employers are not providing retiree benefits to active
18 employees?

19 A. What this data reflects is skewed upward because
20 it includes large state and local governments. And if you go
21 back to the Kaiser study, I can show you her data.

22 Q. All right, let's flip back, then, to tab B,
23 Debtor's Exhibit 31, and go to Section 11, page 134. That's
24 the next page to the one we just looked at?

25 A. Correct.

1 Q. What is on page 134? Just tell the court
2 generally, what is the table?

3 A. This data shows the percent of firms that
4 provide retiree coverage to active workers by firm size,
5 region and industry.

6 Q. All right. And in paragraph 9 of Ms. Taranto's
7 declaration, she was making a reference to employers with five
8 thousand or more workers, jumbo employers, is that correct?

9 A. Correct.

10 Q. And if we look on this table here, on page 134
11 of the 2006 Kaiser survey, where is that represented?

12 A. It is in the first section under, "Firm size,"
13 there's a number that's 54 percent in the second column.

14 Q. What does that 54 percent figure mean?

15 A. That says that 54 percent of all large firms,
16 those with five thousand or more workers, provide retiree
17 health coverage to their active workers.

18 Q. Any idea what the reason is for the difference
19 between 54 percent in this survey, and the 60 percent in
20 Ms. Taranto's declaration?

21 A. Well, I did go back and look at the 2005 survey
22 and, in the 2005 survey, the number was 55 percent. So I'm
23 assuming she meant to say nearly 60 percent.

24 Q. Okay. So at least in 2006, it indicates the
25 number is 54 percent for jumbo employers, five thousand or

1 more; is that correct?

2 A. Correct.

3 Q. Now, I believe you said that does or doesn't
4 include state and local governments?

5 A. That does include state and local governments,
6 and if you look down below under "Industry," you can see that
7 state and local governments have a high prevalence, or high
8 percentage of providing retiree healthcare benefits to their
9 active workers.

10 Q. What's their percentage?

11 A. It's 82 percent. And what's interesting to note
12 about this is, state and local government at the time of the
13 survey were not subject to the accounting rules that private
14 sector firms were and they will be subject to those rules
15 starting this year.

16 Q. So you expect that 82 percent figure to go down
17 some?

18 A. I do.

19 Q. Okay. Now, do state and local governments
20 compete with, like, China and India and stuff like that?

21 A. No.

22 Q. So if we were to look at just the manufacturing
23 industry and large employers in the manufacturing industry
24 that do compete with lower cost countries, what is the
25 percentage of large employers in the manufacturing industry

1 that offer retiree benefits to active employees?

2 A. According to this study, it's 31 percent.

3 Q. Less than a third.

4 A. Less than a third.

5 Q. Well, the first step was eliminating retiree
6 benefits to new hires. The second step was eliminating
7 benefits to active employees. What's the third step that
8 large employers in this country are taking to get out of the
9 business of retiree benefits?

10 A. The third step some employers are doing, a
11 smaller number of large employers are eliminating coverage
12 altogether for current retirees. This is particularly evident
13 among financially distressed companies. But within that
14 category of eliminating coverage for current retirees, there
15 is a larger number of employers who are moving to something
16 called a retiree pay-all plan, where they are essentially
17 offering access to coverage but they are requiring the retiree
18 to pay the entire premium.

19 And the Kaiser study shows that among current
20 retirees, 21 percent --

21 Q. Well, we'll get to that, because let's make sure
22 we don't get lost here.

23 A. Okay.

24 Q. What is the percentage of employers, large
25 employers in this country, who are requiring their current

1 retirees to pay all, to pay for all of their retiree let care
2 benefits?

3 A. It's 21 percent for their pre-65 retirees, and
4 approximately 19 percent for their post-65 retirees, on
5 Medicare.

6 Q. Now, if I can ask you to flip again to Suzanne
7 Taranto's declaration which is in tab E of your notebook, this
8 time I want to refer to a different paragraph, paragraph 11 of
9 her declaration which is on page 5. And you'll see at the end
10 of paragraph 11, there's a reference to a Watson Wyatt study.
11 Can you read that sentence please, loudly and slowly.

12 A. Sure. "A 2005 Watson Wyatt study of 164
13 companies indicates that, while 14 percent planned to
14 eliminate the benefit in the future, only 6 percent planned to
15 eliminate benefits for current retirees."

16 Q. Now, Watson Wyatt, that's where you worked for
17 five years, right?

18 A. Yes.

19 Q. Do you have any comments for the court about
20 this sentence in Susan Taranto's declaration?

21 A. Well, the six percent does not include
22 financially distressed companies.

23 Q. All right.

24 A. And so it's an underestimate.

25 Q. What do you mean it doesn't include financially

1 distressed companies? How do you know that?

2 A. Well, in my years of experience of conducting
3 surveys --

4 Q. Where were you conducting these surveys when you
5 had that experience?

6 A. At Watson Wyatt.

7 Q. And during those five years conducting thee
8 surveys at Watson Wyatt, what was your experience?

9 A. One of the things we find about surveys, first
10 of all, it's very hard to get employers to respond at all to
11 the surveys. But financially distressed employers are very
12 busy and they don't have an interest in filling these out.
13 And the reason is that when employers fill these surveys out,
14 the main motivation is to benchmark what they are doing to
15 other employers. And financially distressed companies realize
16 that their strategy is going to be much different than
17 financially healthy employers of which the survey dominantly
18 covers.

19 Q. And so it's your experience, then, that
20 financially distressed companies are less likely to respond to
21 the survey?

22 A. Correct.

23 Q. Are those financially distressed companies that
24 are less likely to respond to the survey, are they more or
25 less likely to be planning to eliminate retiree benefits for

1 current retirees in the future?

2 A. They are more likely.

3 Q. So the six percent figure understates or
4 overstates the true number of large companies that are
5 planning to terminate?

6 A. It understates.

7 Q. Now, also, does this figure say anything about
8 large employers who have already terminated retiree benefits
9 for current retirees?

10 A. No. Because the survey only goes out to those
11 employers who are already providing benefits over the past
12 year. It doesn't indicate those who have terminated the
13 benefits in the past.

14 Q. Now, are you familiar with the Section 1114
15 proposals that Dana has made in this case that eliminate
16 retiree benefits for current retirees and set up VEBAs for
17 them?

18 A. Yes.

19 Q. Are Dana's Section 1114 proposals consistent
20 with the actions of other distressed companies who have taken
21 this third step of eliminating retiree benefits for current
22 retirees?

23 A. Yes.

24 Q. Now, you are aware that Dana is proposing to set
25 up VEBAs, voluntary employee benefit associations, to -- and

1 fund those VEBAs with some amount of funding to provide a
2 limited amount of replacement coverage for the retiree
3 benefits they are eliminating, is that correct?

4 A. Yes, I'm aware of that.

5 Q. Have you analyzed at all or considered what the
6 amount of the proposed funding for those VEBAs is?

7 A. No.

8 Q. Why haven't you?

9 A. I wasn't asked to.

10 Q. Now, you just told the court it's your opinion
11 that Dana's Section 1114 proposals are consistent with the
12 actions of other distressed companies that are taking this
13 step, correct?

14 A. Correct.

15 Q. Is your opinion affected in any way by how much
16 Dana is proposing to put into the VEBAs that it's offering to
17 establish?

18 A. No.

19 Q. Why not?

20 A. My opinion states that Dana's actions, proposed
21 actions to eliminate the retiree healthcare benefits are
22 consistent with other large employers, particularly distressed
23 employers, and it is my understanding that the amount Dana may
24 be required to contribute to the VEBA is really a matter of
25 negotiations and potentially litigation. And I am not here to

1 offer an opinion about what that amount that they are required
2 to contribute should be.

3 Q. All right. Now, I want to switch the focus of
4 your testimony to the proposed changes that Dana is proposing
5 for the healthcare benefits for its active employees in the
6 HealthWorks plan that is the subject of your declaration.

7 Can you explain to the court what your opinion
8 is on the trends in the present economy regarding the type and
9 nature of healthcare insurance that employers are providing to
10 their active employees.

11 A. Yes. What has happened is, there's been a new
12 type of healthcare insurance out called consumer-directed
13 plans. And these plans have been prompted by concerns over
14 the past 15 years by economists and others that, because of
15 private health insurance, consumers are really shielded from
16 the true cost of care. They go to the doctors and they pay a
17 ten dollar co-pay, but they are really not paying the full
18 cost of the care even though the insurance is very valuable to
19 them. So there's an overconsumption of healthcare services.

20 And this was actually proven in a 2001 Institute
21 of Medicine study where they went out, very respected
22 physicians, and looked at what care people were receiving and
23 they found that there was an overuse and a misuse of
24 healthcare services. So the consumer-directed plans are
25 structured so that the consumer is responsible for more of

1 healthcare dollars at the front end, but the employer also
2 contributes to a savings account for them.

3 Q. How does it make the consumer more responsible
4 for the healthcare spending at the front end in your view?

5 A. Well, because right now, consumers pay a premium
6 and then when they go to the doctor, they only pay ten
7 dollars. But they feel that they paid that premium and they
8 really want to get their money's worth, so if they have to get
9 expensive tests, and the doctor recommends it, they will go
10 and get all the care the doctor recommends. But these plans
11 have a higher deductible, so that first seven hundred to a
12 thousand dollars of care, they will think closely about what
13 they are doing and may not spend it on an expensive test,
14 maybe they will ask their doctor for a cheaper test.

15 Q. Have you evaluated the healthcare plan that Dana
16 is proposing to migrate its active employees to?

17 A. I have.

18 Q. Okay. Could you describe that plan.

19 A. Yes. The plan is a consumer-directed healthcare
20 plan that has a health reimbursement account which is
21 essentially, Dana will contribute a thousand dollars into a
22 health reimbursement account and that thousand dollars is used
23 to pay for the first thousand dollars of care for the
24 consumer -- of healthcare for the consumer.

25 The key thing about the account is, if they

1 don't spend a thousand dollars in care, that money is rolled
2 over to the next year and can be used for health expenditures
3 in the next year.

4 Q. Is this healthcare plan already in place for
5 some of Dana's work force?

6 A. Yes, the salaried work force already has a
7 similar plan.

8 Q. How does this plan compare to what the typical
9 indemnity type plan is in the market today?

10 A. Well, I look at that analysis, and it basically
11 is more favorable for the majority of workers than the
12 traditional indemnity plan.

13 Q. All right. If I could ask you to turn to tab C
14 of your witness notebook, which is Debtor's Exhibit 32. Are
15 you there?

16 A. I'm there.

17 Q. Can you tell the court, what is this document?

18 A. This is a table that I prepared that compares
19 Dana's HealthWorks 2007 plan to the national average consumer
20 directed plan reported in the Kaiser survey.

21 Q. And what does it show?

22 A. And it shows, the first row shows what Dana
23 contributes to the health reimbursement accounts, and Dana
24 contributes a thousand dollars a year.

25 And in the second column, it shows that on

1 average, other employers contribute about eight hundred
2 dollars a year. So Dana is more generous in terms what have
3 they are contributing to the health reimbursement accounts.

4 MR. HAMILTON: Your Honor, I would offer into
5 evidence Debtor's Exhibit number 32.

6 MS. CECCOTTI: This exhibit reflects the
7 correction to Dr. Mulvey's, the table in her declaration?

8 MR. HAMILTON: Yes, we're going to get to that
9 in the end.

10 MS. CECCOTTI: No objection.

11 THE COURT: Received.

12 (Debtor's Exhibit 32, received in evidence, as
13 of this date.)

14 Q. All right. Let's flip to tab D, the next tab.
15 Which is Debtor's Exhibit 34.

16 Would you tell the court what this document is.

17 A. Yes. This document basically compares Dana's
18 health care -- HealthWorks plan to the traditional
19 fee-for-service plan out there, which is probably the most
20 popular plan among Dana's active workers today.

21 Q. What conclusions do you draw from this document?

22 A. I guess the best way to show is that, actually,
23 can I go through the table? It might be easier.

24 Q. Yes, go ahead.

25 A. And I apologize for all the numbers here. But

1 the first column of this table shows that Dana's HealthWorks
2 plan provision, and these are what you saw in the earlier
3 table, the thousand dollars to the reimbursement account, the
4 \$750 deductible, and at this point, it's important to note
5 that the deductible does not get applied to preventive
6 services. And that is very important because studies show
7 that chronic disease that progresses over time and is not
8 identified early is a leading cause of rising healthcare
9 costs.

10 And then there's a coinsurance. But this first
11 column doesn't tell us much. What we need to know is, what
12 are the healthcare expenditures, how much are people spending
13 on healthcare.

14 So the second column shows median healthcare
15 expenditures for insured workers under 65, and I projected
16 that number to 2006. It's \$1,130. So if the median worker
17 had 1,130, the first thousand would be paid by the health
18 reimbursement account. As I move down that second column, you
19 see the parentheses around one thousand. That leaves \$130.
20 So the median employee would only may \$130 or less for
21 healthcare.

22 You add that to the premiums at the bottom of
23 the second column, that's their employee contribution, 624,
24 that means the 50 percent of Dana employees will pay \$754 or
25 less.

1 But when we compare that to the traditional
2 fee-for-service plan, the third column shows the plan
3 provisions. When you take that same median employee through
4 those plan provisions, they don't have the thousand dollars to
5 pay to them. So they have to pay the deductible of 327, and
6 20 percent coinsurance of 161. So they are actually going to
7 pay more out-of-pocket, \$488, than the Dana employee, and then
8 with their premium contributions overall, they will pay
9 \$1,115, which is not -- almost not twice the amount of Dana,
10 but close to it.

11 Q. Are there, in addition to salaried employees of
12 Dana, are there other employees of Dana, including some union
13 employees, that are already in the HealthWorks program?

14 A. I believe so.

15 MR. HAMILTON: Your Honor, I would offer into
16 evidence Debtor's Exhibit number 34.

17 MS. CECCOTTI: Your Honor, I have -- first of
18 all, let me just ask, is this a copy of table 2 that's already
19 contained in Dr. Mulvey's declaration or are there any changes
20 on this chart?

21 MR. HAMILTON: No, there are no changes. It's a
22 copy.

23 MS. CECCOTTI: I have a number of questions
24 regarding this chart, your Honor, which are probably more
25 appropriate for cross-examination. So I suppose, considering

1 the fact that it's simply a copy of what is in her declaration
2 already, I can go ahead and not object to its introduction as
3 a separate exhibit. But -- and we'll just get into the
4 questions that I have about it.

5 THE COURT: It's admitted.

6 MR. HAMILTON: Thank you.

7 (Debtor's Exhibit 34, received in evidence, as
8 of this date.)

9 MR. HAMILTON: We would also offer into
10 evidence, your Honor, the 2006 Kaiser Family Foundation survey
11 that's Debtor's Exhibit 31, which is tab B of her witness
12 notebook. Tab B, 2006 Kaiser.

13 MS. CECCOTTI: No objection.

14 THE COURT: Received.

15 (Debtor's Exhibit 31, received in evidence, as
16 of this date.)

17 Q. And then, Dr. Mulvey, if I could turn your
18 attention back to your declaration, which is Debtor's
19 Exhibit 5, which is tab A of your notebook, and I'd like to
20 draw your attention to page 13, paragraph 32, table 1.

21 Now, is table 1 essentially, except one minor
22 exception, the same thing that is Debtor's Exhibit 32 in your
23 notebook?

24 A. Correct.

25 Q. Now, on this table, when it's reproduced in your

1 declaration, is there a typo on this particular table?

2 A. Yes, there is.

3 Q. Could you show the court where that typo is.

4 A. Sure. In the very first column, third row where
5 it says, "Monthly employee contributions to premiums," that
6 should say, "Annual employee contribution to premiums."

7 Q. And did you make that correction on Debtor's
8 Exhibit 32?

9 A. I did.

10 Q. Now, other than that typographical error in your
11 declaration, is everything else in your declaration that
12 you're aware of, is it true and accurate to the best of your
13 belief and understanding?

14 A. Yes.

15 MR. HAMILTON: Your Honor, we would offer into
16 evidence Dr. Mulvey's declaration, which is Debtor's
17 Exhibit 5.

18 MS. CECCOTTI: Your Honor, I'm hesitating only
19 because I think that in Dr. Mulvey's deposition, she
20 highlighted a couple of other typos, and I wondered when we
21 were going to handle those. I have no general objection, I
22 just wondered if she could just take the time now to just
23 point them out so that I don't have to go through them.

24 MR. HAMILTON: I'm not familiar with what they
25 are. If you think they are substantive, I'm sure you can get

1 to it in cross-examination. But we offer it into evidence.

2 THE COURT: It's received.

3 MR. HAMILTON: Thank you, your Honor.

4 (Debtor's Exhibit 5, received in evidence, as
5 of this date.)

6 MR. HAMILTON: I have no further questions and
7 eagerly anticipate the cross-examination on these typos.

8 MS. CECCOTTI: Your Honor, I will need a few
9 moments to collect --

10 THE COURT: Sure. We'll take a five-minute
11 recess.

12 (Recess taken.)

13 CROSS-EXAMINATION BY MS. CECCOTTI:

14 Q. Ms. Mulvey, I'm Babette Ceccotti from Cohen,
15 Weiss & Simon, representing the unions. Good afternoon.

16 A. Good afternoon.

17 Q. Now, I'm correct that you're trained as an
18 economist, correct?

19 A. Correct.

20 Q. Not as an actuary.

21 A. Correct.

22 Q. Are you a restructuring professional?

23 A. No.

24 Q. Have you ever advised companies going through
25 Chapter 11?

1 A. No.

2 Q. You used the term, "Distressed" several times
3 during your direct testimony to describe distressed companies
4 or distressed employers. How are you defining "distressed"?

5 A. Distressed employers are generally firms where
6 they have continual declines in profit, you know, negative
7 profit over a number of years, and in the extreme case,
8 distress means bankruptcy.

9 Q. And in your testimony, you were using that term
10 to describe companies in bankruptcy as well as non-bankrupt
11 companies.

12 A. Yes.

13 Q. In terms of the Watson Wyatt study that was
14 referenced at paragraph 9 of Ms. Taranto's declaration, were
15 you at Watson Wyatt at the time that study was conducted?

16 A. No, I wasn't.

17 Q. Do you have any personal knowledge of what the
18 response rate was for that particular study?

19 A. Well, actually I did call the author of the
20 study and asked him whether there were any financially
21 distressed companies in there, and he said no.

22 Q. And what definition of "distressed companies"
23 did you use with that individual?

24 A. I had just said "financially distressed." When
25 I worked at Watson Wyatt with him, we kind of knew generally

1 what we meant by "financially distressed."

2 Q. So you used the same shorthand with him, in
3 other words. Okay. Let's turn to your declaration, which is
4 behind tab A. And in paragraph 4, you state here that you
5 submitted testimony in a legal proceeding which is cited there
6 as UAW versus General Motors Corporation.

7 A. Correct.

8 Q. Is that correct? And that testimony concerned
9 the settlement agreement between UAW and GM regarding, I
10 believe what's referred to as the modified GM health plan for
11 retirees, do you remember?

12 A. Yes.

13 Q. Okay. And your conclusion in that -- well, what
14 was your conclusion in that?

15 A. My conclusion as I recall was that the proposals
16 that GM were making were reasonable.

17 Q. By the time you testified, there was already a
18 settlement agreement, correct?

19 A. Yes, I did not testify in that case. I
20 submitted the declaration.

21 Q. When it says "testimony" here, you're referring
22 to the declaration that was filed with the court in that
23 matter. You didn't actually testify.

24 A. Correct.

25 Q. Okay. Do you remember stating in your

1 declaration, "Overall, in my opinion, the GM modified plan is
2 fair and reasonable"?

3 A. That sounds correct.

4 Q. What about the GM modified plan would have
5 caused you to conclude that it is fair and reasonable?

6 A. They made relatively modest changes to, I
7 believe, prescription drug co-payments, and they made some
8 small changes to the coinsurance rate. Again, I don't recall
9 exactly. But they were basically modest changes in
10 out-of-pocket spending.

11 Q. Okay. GM was not eliminating its obligation to
12 provide retiree healthcare in the modified plan, was it?

13 A. No.

14 Q. Okay. Moving to -- let's talk about the
15 HealthWorks plan starting with paragraph 22 of your
16 declaration.

17 You say that, in about the middle of paragraph
18 22, "Consumer-directed health plans are relatively new and in
19 2006, only seven percent of large employers reported they had
20 implemented them."

21 Is that --

22 A. That's correct.

23 Q. Okay. And you are referring to the Kaiser 2006
24 study. Would that be the exhibit that we talked about or that
25 you spoke about in your direct examination, Debtor's 31?

1 A. Yes. The actual chapter for that is not
2 included there, but I think I submitted it when I submitted my
3 materials.

4 Q. I believe --

5 A. Or it might be in the summary.

6 Q. I was just going to say, yes. If we can take a
7 moment --

8 A. I believe it's on the first page, first
9 paragraph, "Key findings."

10 Q. This is tiny type. I'm sorry. You said --
11 what's the page number at the bottom? I'm sorry.

12 A. It says number 1 of the executive summary of
13 Kaiser.

14 Q. Oh, okay. Give me a second. I'm there.

15 A. And the very first paragraph.

16 Q. Yes, there it is. Okay. And that 7.7 percent
17 figure includes essentially two types of consumer-directed
18 plans. I don't think you talked about the two types in your
19 direct testimony, did you, this morning?

20 A. Correct.

21 Q. Okay.

22 A. I can explain --

23 Q. Why don't you take a moment.

24 A. There's two types of plans. There's a health
25 reimbursement account, which is largely funded by the

1 employer, and then there's a health savings account, which is
2 largely funded by the employee through funds that are not
3 taxed.

4 Q. And which type is HealthWorks?

5 A. HealthWorks is the health reimbursement account
6 funded by the employer.

7 Q. Okay. So in that same paragraph that we're
8 looking at here, under tab B, let's see, the 7.7 percent
9 figure, and if we go down -- I apologize -- of that 7.7
10 figure, do you know how much is the structure that is
11 represented by the HealthWorks model?

12 A. I don't. I would have to look at that detailed
13 table where I got that information.

14 Q. And that's not part of Exhibit B, is it?

15 A. No.

16 Q. I see. Okay.

17 A. Actually, can I correct that? In some cases,
18 they did break out how much was HRA and how much was HSA. I
19 cannot recall directly without looking at that data.

20 MS. CECCOTTI: Give me a moment.

21 (A pause in the proceedings.)

22 Q. Can you turn to page 5.

23 A. Yes.

24 Q. And directing your attention to the first column
25 on the left, the second block of type about halfway down, it

1 says, "Firms with one thousand or more workers are more likely
2 than smaller firms to offer the HSA qualified HDHP"; do you
3 see that?

4 A. I'm sorry?

5 Q. I'm sorry. Let me withdraw that. If you look
6 at the paragraph that starts, "Seven percent of firms offering
7 health benefits offer an HDHP/SO in 2006," and the next
8 sentence says, "This is statistically unchanged from the four
9 percent, etc., and then the next sentence says, "Among the
10 firms offering health benefits, one percent offer the
11 HDHP/HRA."

12 Is that consistent with your recollection of the
13 data?

14 A. Yes.

15 Q. Can you tell us what percentage of employers who
16 offer high deductible health plans offer them as the only
17 health plan that the employer offers as opposed to one of an
18 option of health plans?

19 A. I don't have that readily available. I mean, I
20 think the 7 percent refers to those who are offering it
21 primarily as the main plan. When these first came out,
22 employers were offering them as an option and it caused a
23 great deal of something called adverse selection where certain
24 employees would go into the other plan. So they moved to
25 primarily offering one plan.

1 Q. Looking, again, at paragraph 22 of your
2 declaration, you state that, "Nearly 31 percent of large
3 employers, however, plan to offer consumer-directed health
4 plans in the near future," again citing the Kaiser 2006 study.

5 Where would I find that number?

6 A. That, I think is in, there's a whole detailed
7 chapter that I submit -- that was submitted with my
8 declaration as part of my reference materials on the whole
9 nature of health reimbursement accounts and consumer-directed
10 plan.

11 Q. Can you turn to page 7 behind tab B. And
12 Exhibit A at the bottom is entitled, "Among firms offering
13 health benefits, distribution of firms reporting the
14 likelihood of making the following changes in the next year,
15 2006." Do you see that?

16 A. I do.

17 Q. And the second-to-last entry, "Offer HDHP/HRA,"
18 we see that the "very likely" column says six percent. Right?

19 A. Uh-huh.

20 Q. The "somewhat likely" column says 18. The "not
21 too likely" column says 31. And the "not likely at all"
22 column says 44 percent. Correct?

23 A. Correct.

24 Q. Do you think that there's other information in
25 the more detailed section that might --

1 A. Yes.

2 Q. -- more closely correspond to the number that's
3 in your declaration?

4 A. Yes. The detailed section breaks it out by firm
5 size and the number I believe I cite in my declaration are
6 larger firms. And that number is much larger than what you
7 see here.

8 MS. CECCOTTI: We could ask perhaps counsel, to
9 make this go more efficiently, for counsel, and if it's in the
10 courtroom today, that would be fine, if we could get the
11 detailed information there, I would like to look at that in
12 comparison to the exhibit we were provided.

13 MR. HAMILTON: Your Honor, we gave it to them.
14 They have it. It's not my job to prepare their
15 cross-examination exhibits.

16 THE COURT: Take five minutes and see if you can
17 highlight it.

18 MS. CECCOTTI: I'm prepared to proceed while
19 they do. I have no intention of stopping.

20 MR. HAMILTON: I have no idea if we have it,
21 your Honor.

22 MS. CECCOTTI: If not, we can always take it
23 later. I'm prepared to proceed.

24 Q. And moving now to paragraph 4 of your
25 declaration, you describe HealthWorks 2007 as a

1 consumer-directed health plan and I believe in your testimony,
2 you described your understanding of what that means.

3 First of all, do you know how it got the name?

4 A. Consumer-directed?

5 Q. Yes.

6 A. No, I guess the idea is that a consumer would
7 direct those funds, the first, you know, whatever thousand
8 dollars or two thousand dollars. So --

9 Q. Is this something that consumer groups have been
10 clamoring for, something called a consumer-driven health plan
11 with the attributes that you described?

12 A. No, not -- I mean, I think, again, it's
13 consumer-directed because the idea is to empower the consumer
14 to spend their healthcare dollar wisely and to direct it
15 efficiently, and that's why it's called consumer-directed.

16 Q. It's the employer that's looking to substitute
17 consumer-driven plans for indemnity plans, right?

18 A. Yes.

19 Q. It's not something that unions have been
20 clamoring for, to your knowledge.

21 A. That's correct.

22 THE COURT: That includes state and federal
23 governments, doesn't it?

24 THE WITNESS: Yes.

25 Q. Now, in paragraph 24 you state that a

1 consumer-driven health plan is one that provides incentives
2 for the individuals who are covered to become more involved
3 and proactive in their healthcare decisions; is that generally
4 correct?

5 A. Correct.

6 Q. Is it a fair summary to say that the idea is to
7 incentivize cost-effective behavior?

8 A. Yes.

9 Q. Not to overuse services or pay too much for
10 services. I think the example that you gave exactly in your
11 direct testimony had to do with someone in another type of a
12 plan who had paid a particular premium and then paid ten
13 dollars for a doctor's visit; okay? And I believe your
14 testimony was that because the individual was paying ten
15 dollars but had already paid a premium, the individual might
16 feel a need to seek out other services to make it,
17 quote-unquote, "Worthwhile." Is that a fair summary?

18 A. Yes.

19 Q. The ten-dollar scenario, though, that wouldn't
20 be a traditional indemnity plan, would it? Wouldn't that be a
21 plan that we typically think of as a network plan where you go
22 to a network doctor and you're incentivized to go to an
23 in-network doctor because you're only going to pay ten or 15
24 bucks out of pocket?

25 A. The preferred provider network.

1 Q. The preferred provider network. Okay. Now,
2 actually while we're on that topic, HealthWorks 2007, I
3 suppose we should take a moment and talk about what that
4 means. The actual HealthWorks 2007 applies to more than just
5 health benefits, as you understand it.

6 A. Yes, I believe it does.

7 Q. But in your declaration, you were only talking
8 about the health benefits portion; is that correct?

9 A. Yes.

10 Q. Okay. Now, I don't see here a description of
11 HealthWorks or the plan documents, but did you review the
12 HealthWorks 2007 plan document?

13 A. I did.

14 Q. Okay.

15 (A pause in the proceedings.)

16 MS. CECCOTTI: We're just taking a moment to
17 provide a copy of 2007, it says "Draft SPD," but it's entitled
18 "HealthWorks," it's offered behind the declaration of
19 Mr. Arquette, who has not yet testified.

20 Q. But for this purpose, I just want to have you
21 take a look at it and ask you if that's the document you
22 referred to.

23 (Document distributed.)

24 THE COURT: We're marching toward a lunch break
25 in about ten minutes.

1 MS. CECCOTTI: That's fine, your Honor. If I
2 lose track of time you'll give me a signal, I'm sure.

3 THE COURT: I have a red light. This is it
4 (indicating).

5 Q. Do you have that document?

6 A. I do.

7 Q. It's a little hard to find. I suggest you start
8 from the back and get to it, I think it's Exhibit C. But
9 you're never going to find it that way.

10 A. Yes, it's about a third of the way -- wait a
11 minute --

12 Q. And I'll just take you right to page 10 which I
13 think starts the medical portion.

14 A. Okay. Yes.

15 Q. Are you there? Okay. So the HealthWorks
16 appears to provide different, I'll call them types of
17 coverage. There's single coverage, single plus one and
18 family; do you see that on page -- first of all, this is the
19 document you looked at?

20 A. Yes.

21 Q. Okay, good. And if you look at page 11, we see
22 that there's an in-network and out-of-network option.

23 A. Yes.

24 Q. Correct. Okay. So would it be fair to say that
25 incentivizing behavior could also exist in a health plan that

1 did not have a high deductible but simply had an in-network
2 and out-of-network option?

3 A. No, because the traditional or the other plans
4 would not have the health reimbursement account, which is very
5 important, and the larger deductible to kind of incentivize
6 the first, early dollars of coverage.

7 Q. You see here that, in the -- go ahead.

8 A. I think what you're saying is, certainly,
9 between the in-network and out-network in the HealthWorks,
10 there's a greater incentive to stay in network.

11 Q. Okay. Wouldn't necessarily have to involve the
12 high deductible. I understand that that's a particular design
13 feature, but there are lots of plans out there that don't
14 have -- in fact, your testimony or your declaration cites that
15 we have very few employers right now even providing the high
16 deductible health plans at this point; right?

17 A. Because there are new products.

18 Q. Because there are new products, exactly. But
19 there are other types of plans that provide incentivizing
20 behavior as well, just through products that were, you know,
21 once new and are now used, you know, by large employers such
22 as this in-network, out-of-network incentivizing plan,
23 correct?

24 A. Yes, but I think in the industry there was a
25 feeling that those weren't going far enough in controlling

1 healthcare costs.

2 Q. I guess my question is that the consumer-driven,
3 the high deductible health plan is not uniquely a plan
4 designed, it's not the only market, the only product in the
5 marketplace that is designed to covered individuals to seek
6 cost-effective coverage, cost-effective use of the health plan
7 services, correct?

8 A. Well, actually, they were developed with health
9 savings accounts to exactly provide a more effective means
10 of --

11 Q. I didn't ask if it was more effective. I'm
12 asking you if incentivizing behavior is uniquely a feature of
13 a high deductible health plan.

14 A. No.

15 Q. Okay. Also in paragraph 24, I realize we're
16 flipping of lot of these books here, but let's go back to
17 paragraph 24 of your declaration. And I'm on page 10,
18 actually, you say, "A 2006 study by the Employee Benefits
19 Research Institute found that individuals covered by consumer
20 directed health plans exhibit more efficient and
21 cost-conscious behavior in their healthcare decisionmaking
22 than individuals covered by more traditional healthcare
23 insurance," do you see that?

24 A. I do.

25 Q. And would you be referring to -- look on the

1 list of materials appended to your declaration. Would you
2 referring to the December 2006 --

3 MS. CECCOTTI: -- may I approach the witness?

4 Q. I'm just going to have you see if that refreshes
5 your recollection.

6 A. Yes.

7 Q. That's the survey you're referring to?

8 MR. HAMILTON: Could we get a copy?

9 MS. CECCOTTI: Yes, absolutely.

10 Q. And I believe the bullet point that sets forth
11 what we just read is the second from the bottom, "More
12 cost-conscious behavior."

13 A. Correct.

14 Q. There's a second sentence in that bullet point,
15 is there not? "However, in many questions that address this
16 issue, those in more comprehensive plans were just as likely
17 to report such behavior as adults in consumer-driven or
18 high-deductible health plans," do you see that?

19 A. I do.

20 (Continued on following page.)

21

22

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25

1 Q. This is -- well, it says that it's a healthcare
2 survey. Are you familiar with these surveys?

3 A. I am.

4 Q. Okay. You don't have any reason to doubt the
5 statement in that second sentence in that bullet point, do
6 you?

7 A. No.

8 MS. CECCOTTI: Your Honor, I would suggest since
9 I'm now going to get into the tables, that this might be a
10 good place to stop. Otherwise, we'll just be --

11 THE COURT: We'll have a Ceccotti lunch hour.
12 See you at 2 o'clock.

13 MS. CECCOTTI: Thank you, your Honor.

14 (Luncheon recess: 12:30 p.m.)
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1 A F T E R N O O N S E S S I O N

2 (2:02 p.m.)

3 J A N E M A R I E M U L V E Y , having been previously
4 sworn, resumed the stand and testified further as
5 follows:

6 MS. CECCOTTI: Your Honor, during the break, the
7 detailed section of the Kaiser survey document that we
8 discussed before the break has been provided, so I'd just like
9 to take a few moments to go back to that, and I will, if I
10 may, approach the witness with what I hope she will identify
11 as a copy. And if I may approach, Judge.

12 (Document distributed.)

13 CROSS-EXAMINATION BY MS. CECCOTTI (Cont'd.):

14 Q. And I believe if we go to -- I have to confess
15 that I'm going to use the color one -- if we go to page 113,
16 first of all, Dr. Mulvey, is this in fact the section you were
17 referring to?

18 A. Yes, it is.

19 Q. Then why don't we go to page 113 and make sure
20 I've correctly identified the page. At the top, among firms
21 not currently offering an HDHP/HRA, that's the model we're
22 dealing with here, percentages who say they are very likely or
23 somewhat likely to offer this type of program in the next
24 year. And your testimony, I believe, is that the figure in
25 paragraph 22 of your declaration came from the five thousand

1 or more workers --

2 A. Correct.

3 Q. -- category. What counsel described as the
4 jumbo employers, right?

5 A. Yes.

6 Q. Okay. So --

7 THE COURT: Which included state and federal
8 governments.

9 THE WITNESS: Yes.

10 MS. CECCOTTI: I'm sorry, your Honor? I didn't
11 hear you.

12 THE COURT: I said which also included state and
13 federal governments.

14 MS. CECCOTTI: Thank you, your Honor.

15 Q. And if we look at the 2006 bar, the darker bar
16 is the "very likely" bar, and that's ten percent, correct?

17 A. Correct.

18 Q. It's a little hard to read probably on the Xerox
19 copies. And the lighter bar is 21 percent, and that
20 represents the "somewhat likely" category.

21 A. Correct.

22 Q. Okay. So you used the 21 percent plus the ten
23 percent in both those categories to come up with the -- to --
24 you interpreted those to say that 31 percent of large
25 employers, however, plan to offer.

1 A. Correct.

2 Q. Okay, thank you. Let's go back very -- among
3 the very first things that you testified to in your direct was
4 what you called the trend that you have observed, which I
5 believe I have accurately summarized here as, more and more
6 employers are either significantly reducing or completely
7 eliminating healthcare to retirees; is that correct?

8 A. Correct.

9 Q. And then you went through the three steps. And
10 the third step you discussed what I believe you characterized
11 as a smaller number of employers, and here you need to help
12 me.

13 Is that smaller category the "eliminate and
14 significantly reduce," or one or the other?

15 A. I meant to say a smaller number eliminating.

16 Q. Eliminating. Okay. Where in the continuum
17 would you put employers who are significantly reducing, as
18 opposed to eliminating?

19 A. Well, they -- in addition to eliminating for new
20 hires, active workers and current retirees, there were also
21 those who didn't eliminate are significantly reducing the
22 value of that benefit by pushing the cost on to retirees.

23 Q. Cost shifting?

24 A. Cost shifting to go back to workers and current
25 retirees.

1 Q. In various ways, correct.

2 A. Right.

3 Q. Paying more premiums, sharing deductibles, all
4 of that. Okay. As between the eliminating and the
5 significantly reducing, order of magnitude as to the employers
6 that are eliminating versus significantly reducing?

7 A. I believe I said the --

8 MR. HAMILTON: Your Honor, I'm just going to
9 object to the form of the question. It's very significant if
10 she's talking about eliminating for active employees versus
11 current retirees, two different --

12 MS. CECCOTTI: I'd be happy to break the
13 question down. You can answer them.

14 Q. Why don't we go with -- I'm either talking about
15 eliminating or significantly reducing for current retirees.

16 A. Okay. As far as -- I'm sorry, say the first
17 part of the question that related to that?

18 Q. As between, we're talking about current
19 retirees, not the future group, just the current retirees.
20 The employers that are eliminating versus significantly
21 reducing, which is the bigger group.

22 A. The bigger group is significantly reduced.

23 Q. Okay. I think now we can go back to where we
24 were before the lunch break, and I was going to go next to
25 table 1. I guess it's best at this point to use the tab D

1 version -- no, that's not the tab D version, it's the other
2 one. It's the Debtor's 32 behind tab C.

3 Okay. So we have in the Dana HealthWorks 2007,
4 you have noted the features of -- would it be fair to say that
5 you've noted the features of the plan design applicable to
6 single employees, single coverage?

7 A. Yes, it says that in the title.

8 Q. Right. Okay. And HealthWorks offers more than
9 single coverage. I think we talked about this beforehand. Is
10 there any reason why you limited this to single coverage?

11 A. Well, generally, when you look at the numbers, I
12 could have done family coverage and compared them, but I think
13 the comparison would have been similar.

14 Q. Okay. Do you have any idea of, for Dana
15 employees, what the breakdown is between single coverage and
16 family coverage?

17 A. I don't.

18 Q. You don't. Okay. In addition, you have, table
19 1 provides the plan design for the in-network benefit; is that
20 correct?

21 A. Correct.

22 Q. And going back to the other big book here,
23 Mr. Arquette's declaration, exhibit, the HealthWorks document
24 as page 11, we see there that there are a couple of plan
25 design attributes that are different for in-network and

1 out-of-network; is that correct?

2 A. Correct.

3 Q. Okay. For example, there is no annual
4 out-of-pocket maximum in the out-of-network, for
5 out-of-network coverage, is that correct?

6 A. Correct.

7 Q. Okay. And are you aware of of what the
8 coinsurance is for out-of-network coverage under the
9 HealthWorks 2007?

10 A. I am not offhand. I'd have to look here.

11 Q. It was here. Yes. If you go to page 12,
12 there's a small chart -- no, I'm sorry.

13 (A pause in the proceedings.)

14 Q. Ah, page 13 at the top. Coinsurance percentage
15 for out of network coverage is 40 percent; correct?

16 A. Correct.

17 Q. Meaning, the individual pays 40 percent and Dana
18 pays 60 percent or however they work that out. Okay.

19 So the conclusions that you state in paragraph
20 32 then would be applicable only to the in-network comparison,
21 the comparison with the in-network coverage?

22 A. I did the comparison for in-network coverage but
23 I glanced at the data for the family and I think the
24 relationship would be similar. I didn't do that analysis but
25 I think it would be similar with respect to the co -- with

1 respect to some of the categories.

2 Q. If I said family, I misspoke. I meant out of
3 network. Your conclusions in paragraph 32 do not apply to the
4 out-of-network coverage.

5 A. Correct.

6 Q. Okay. Actually, let's just go back to paragraph
7 26 for a moment. You are -- you state here that, in the
8 middle of the paragraph, "While Dana believes that it will
9 take time and education of employees to realize the savings
10 under HealthWorks 2007, these savings can be substantial," and
11 then you cite Dana estimates that it can save 5.75 million per
12 year with the transition of current union employees not
13 already covered by HealthWorks to HealthWorks 2007, and you're
14 citing Mr. Arquette's declaration.

15 A. Correct.

16 Q. So that is his figure?

17 A. That is his figure.

18 Q. You didn't look behind that figure or do your
19 own analysis on that.

20 A. No.

21 Q. You're just reporting his figure. What about
22 the sentence, "While Dana believes it will take time and
23 education of employees to realize the savings," what about
24 that observation? Why would it take time and education to
25 realize the savings?

1 A. I actually believe that is a statement in
2 Mr. Arquette's thing, but the issue is that, in the first few
3 years, while you will save marginally, you will have to kind
4 of -- people will have to learn how to become good healthcare
5 consumers. So they may at first pay for that expensive test
6 because they don't know anything else.

7 But what's happening, and there's a big effort
8 underway on the Internet for people to get on and rate their
9 doctors, and find maybe a cheaper alternative to certain test.

10 So there's ways that people are going to be
11 learning to be better healthcare consumers over time. That's
12 what I interpreted. But I think that exact statement was in
13 Mr. Arquette's, and you could probably ask him.

14 Q. Okay. But is a statement like that consistent
15 with your understanding of the experience that employers who
16 implement these programs have in terms of needing time and
17 education to realize whatever savings they are anticipating?

18 A. Well, I think the programs are very new so we're
19 still learning what's going to happen. I think that's an
20 assumption that we're going to make, that it will take a
21 little time to educate them.

22 Q. Are you aware, you mentioned the Internet-based
23 products list. Do you know what products HealthWorks has that
24 they might be offering to employees to help them with this
25 education process?

1 A. I don't.

2 Q. Okay. How about for Dana, whether Dana is
3 offering any?

4 A. No.

5 Q. Have you seen any of these in operation?

6 A. I haven't. I've actually been involved with
7 kind of the provider side where they are trying to, the
8 Federal Government wants providers to provide on-line to
9 everybody key indicators of their quality of care so people
10 can look at different physicians and understand better their
11 quality. So I am familiar with the general idea and the
12 data --

13 Q. In the federal government sector --

14 A. Well, the Federal Government is going to require
15 everybody to provide it to everyone in terms of on the
16 Internet.

17 Q. The Federal Government in its own health program
18 for its own employees?

19 A. No, it's -- for Medicare --

20 Q. Sorry, for Medicare?

21 A. They are going to require and it's being pushed
22 to the private sector.

23 Q. For Medicare eligibles.

24 A. Yes.

25 Q. Okay. Let's go now to paragraph 34, table 2,

1 and we can either, again, referring to the larger version
2 behind tab D, first of all, with this first column that you
3 walked us through during your direct testimony, this, again,
4 as it states in the heading, is single coverage in-network
5 plan design provisions.

6 A. Correct.

7 Q. Okay. Where did the information come from for
8 what you have termed the median employee expenditure under
9 Dana's HealthWorks 2007?

10 A. That information is from a national dataset
11 called the Medicare Expenditure Panel Survey that is a
12 representative sample of the U.S. population with respect to
13 their Medicare -- Medicaid -- medical expenditures. It
14 actually -- it should -- I'm sorry, this says Medicare
15 Expenditure Panel. It should say Medical Expenditure Panel.
16 That was a typo that I did not see.

17 Q. That's why I couldn't find it. Medical
18 expenditures. Who publishes that?

19 A. The -- AHRP, the agency for healthcare policy
20 and research. A Federal Government agency. It's been a
21 survey that's been out for quite a while. They have refined
22 it considerably over the years.

23 Q. And how do they collect the data?

24 A. They go out to individuals -- I don't -- I
25 think -- I think it's a phone survey, if I recall. And they

1 actually call people. And they also go and follow up and
2 actually sit down with them and look at their medical bills to
3 see how much they spend. Because a lot of people don't even
4 actually realize how much they've spent. So it's very
5 detailed in how they capture the different areas of
6 expenditures.

7 Q. I'm sorry, they are gathering information from
8 the --

9 A. Individuals.

10 Q. -- from the individuals. And this is without
11 regard to what health coverage they might have?

12 A. No, they actually capture health coverage in
13 terms of what kind of insurance they have as well.

14 Q. Okay. So this could capture people in
15 provider-type arrangements?

16 A. Correct. The category of private insurance.

17 Q. Private insurance of all ways, shapes, ways,
18 manners and forms, in all of its varieties. Okay. And what's
19 the -- how big is the database?

20 A. It's very large. As I said, it's considered a
21 representative sample of U.S. population, so statistically,
22 the information in that is generalizable to the whole
23 population. I don't exactly remember how many recip -- people
24 are in the survey, but it's very large.

25 Q. And -- okay. So this information is not based

1 on Dana claims information.

2 A. No. This information is based on the population
3 that is insured that's under 65. I did not have access to the
4 Dana --

5 Q. You didn't have access to -- I'm sorry, I'm
6 violating the reporter's rule here. You didn't have access to
7 Dana's claims information? Did you ask for it?

8 A. No.

9 Q. You didn't ask for it.

10 A. I -- the scope of this project was pretty quick.
11 I mean, I was asked to enter this in December. So it would
12 have taken much longer to actually analyze the individual
13 claims data in such a short period of time.

14 Q. Well, okay. In paragraph 34 of your
15 declaration, you're, in essence, describing table 2 and the
16 exhibit we just looked at, correct?

17 A. Correct.

18 Q. Okay. But then, in paragraph 35, you state, "As
19 table 2 shows, if their experience mirrors the MPPS data as
20 adjusted for 2006, over half of Dana's union employees will
21 spend \$361 less per year on healthcare under HealthWorks 2007
22 than they would if they were covered by an average traditional
23 fee for service health insurance plan."

24 That's your statement; correct?

25 A. Yes.

1 Q. So doesn't that strike you as a pretty big "if,"
2 though?

3 A. Well, in my experience in dealing with this
4 data, this national dataset does closely align with others. I
5 mean, there might be a difference in terms of the type of
6 insurance coverage, but I don't think, I mean, without seeing
7 the data it's going to be significantly different.

8 Q. But again, you don't know because you haven't
9 seen the Dana claims data.

10 A. Right.

11 Q. Correct? Let's talk about this adjusted for
12 2006. What you did is, you explain in paragraph 34 is, again,
13 taking this other database material for prior year, correct?

14 A. Yes, the only data that was available was the
15 2004 data. That's the most recent data year, and I projected
16 it using a seven percent growth rate.

17 Q. And when you say seven percent growth rate,
18 just, medical inflation?

19 A. Yes.

20 Q. Okay. But you only looked at one year's worth
21 of this data.

22 A. Yes.

23 Q. But nevertheless, you projected it forward two
24 years using simply the growth rate, correct?

25 A. Correct.

1 Q. No other adjustment.

2 A. Right.

3 Q. Would it necessarily be the case that somebody
4 who spent -- let's just take the number in here -- somebody
5 who spent \$754 in one year would necessarily spend that or
6 less two years later?

7 A. Well, what the statistic says is, fifty percent
8 of the sample is spending that money. So --

9 Q. In that year.

10 A. In that year.

11 Q. In 2004?

12 A. Right. It is true that some people are sicker
13 in one year than another, and that healthcare expenditures are
14 highly skewed to high-cost users. But what the data actually
15 show is that only ten percent of the population accounts for
16 about 40 percent of healthcare expenditures.

17 Q. I'm sorry, could you repeat that? I apologize.

18 A. Sure. What the actual, when you look at
19 healthcare expenditures across the population, a very small
20 share, say ten -- and I don't have exact numbers, but I can
21 get close -- ten percent of the individuals, high cost
22 individuals, the very sick individuals, consume almost 40
23 percent of the healthcare expenditure bucket. So when you
24 look at healthcare expenditures, they are very skewed to the
25 high cost user, and that this media number is a much better

1 estimate of what the fifty percent of the population is
2 spending. That's --

3 Q. Okay. But again, you don't, since --

4 THE COURT: So the hypochondriacs are taking all
5 the money.

6 Q. But again, since you haven't looked at the Dana
7 claims, you really don't know if that pattern holds, correct?

8 A. Well, I know the high cost issue holds across
9 everything. I mean --

10 Q. And do you have any idea how many employees who
11 are covered by Dana's current health programs would be
12 considered high-cost users?

13 A. I don't.

14 Q. You don't. Okay. And again, looking at
15 paragraph 35, in the middle, let's see, you say, "Table 2 does
16 not account for the fact that twelve percent of insured
17 individuals will not incur any health care expenditures in a
18 given year beyond their premiums or monthly contributions,"
19 again citing this database, correct? But here again, you
20 wouldn't know if that would be true of Dana's employees,
21 correct?

22 A. Correct.

23 Q. You said you had looked at the claims data. But
24 have you looked at demographic data of the Dana employees who
25 are covered under the health plans?

1 A. Demographic in terms of age?

2 Q. Age, male/female split.

3 A. The only age I've seen is the pre-65, post-65
4 retiree data in terms of a number. I haven't seen the age
5 distribution.

6 Q. You've not seen the age distribution. In other
7 words, how many are pre-65 and post-65. Okay. Let's go to
8 paragraph 38. Now, we're switching over to the retiree health
9 section of your declaration.

10 And here, you've cited that January 1, 2006
11 retiree healthcare obligation of 1.4 billion, which is set
12 forth in Mr. Hoffman's declaration, correct?

13 A. Correct.

14 Q. And do you know that to be the APBO number?

15 A. I believe that is.

16 Q. And as you understand it, the APBO number is in
17 effect a present value calculation. Would it be fair to say
18 that the APBO number is a present value calculation of a
19 stream of payments expected to be made over time?

20 A. Correct.

21 Q. Okay. But you're comparing that number to
22 projected company revenues in 2007.

23 A. In -- yes.

24 Q. In that particular paragraph.

25 A. Yes. And I can explain why.

1 Q. No, I just wanted to make sure I had that
2 correct. Moving on to paragraph 50 here, we're talking about
3 retirement healthcare for active employees. And you say, "In
4 addition, a few large automotive suppliers have eliminated
5 their company-subsidized retiree medical for new," here you're
6 talking about non-union hires. And you say, "Many others,"
7 and you list some, "Have imposed caps for implemented
8 individual account plans."

9 Are you aware that Dana has also implemented
10 caps in its retiree healthcare obligation?

11 A. I am.

12 Q. Do you know for about how long Dana has had caps
13 in place?

14 A. I believe -- I think I was told during my
15 deposition, mid '90s, perhaps, I think I recall.

16 Q. That was information that you got in the
17 give-and-take of your deposition.

18 A. Yes.

19 Q. Not information that you had at the time that
20 you prepared the declaration.

21 A. Correct.

22 Q. Okay. So would you know, then, in connection
23 with the ABPO number that Mr. Hoffman cites at paragraph 38,
24 would you know how much of that is attributable to the capped
25 obligations?

1 A. I don't.

2 Q. Paragraph 51, you have noted some which have
3 eliminated retiree medical benefits for future retirees in
4 bankruptcy. And you list four companies there. Let's just
5 take the Continental Airlines example. Do you have any
6 details about how that occurred, or -- first of all,
7 Continental went through two bankruptcies, are you aware of
8 that?

9 A. Yes.

10 Q. Do you know whether this was during the first or
11 the second?

12 A. I think this was during the first.

13 Q. During the first. Okay.

14 A. I don't recall.

15 Q. Georgetown Steel -- was that a court -- was that
16 imposed through the bankruptcy process, do you know, or was
17 that some sort of negotiated solution?

18 A. I don't recall.

19 Q. Do you recall if it was -- okay. Georgetown
20 Steel, again a company that was unfortunate enough to go
21 through two bankruptcy cases.

22 Does this reference refer to the first or
23 second, if you know?

24 A. I think it's the first.

25 Q. You think it's the first?

1 A. But I'm not totally sure.

2 Q. You're not totally sure. And again, do you know
3 if this was something that was imposed by virtue of a court
4 process like the one we have here today, or through some
5 negotiation?

6 A. I don't -- don't know.

7 Q. Outboard Marine Corporation, any details there
8 as to how the elimination came about?

9 A. No.

10 Q. Other than during the course of its bankruptcy.
11 Are you aware that Outboard Marine Corporation liquidated?

12 A. I don't know.

13 Q. That's not information you have. Okay.
14 Wheeling Pittsburgh, again, another company that went through
15 two bankruptcy cases. Do you know which one?

16 A. I don't.

17 Q. And do you know if it was by virtue of a
18 negotiation or through a court-imposed process like what we
19 have here?

20 A. I don't.

21 Q. Okay. Dr. Mulvey, are you generally familiar
22 with Section 1114 of the Federal Bankruptcy Code?

23 A. Generally.

24 Q. You're not trained as a lawyer?

25 A. No.

1 Q. Okay. Are you familiar enough to know that it
2 allows a company to, through a couple of different processes,
3 modify or terminate its retiree health obligations in
4 bankruptcy?

5 A. Yes.

6 Q. Are you familiar with the processes?

7 A. Not totally, no.

8 Q. So if I told you that there could be a
9 negotiated way to do it, are you familiar with that? Without
10 coming to court, are you familiar?

11 A. Yeah.

12 Q. You understand that to be true?

13 A. Yes.

14 Q. Okay. In paragraph 56, we're in now the section
15 that talks about retiree healthcare benefits to current
16 retirees. In paragraph 56, you say there were numerous
17 examples of other large employers that have eliminated or are
18 in the process of eliminating retiree health benefits for some
19 or all of their existing retirees outside of bankruptcy. And
20 then you list some here.

21 Do you know whether, in any of the cases here,
22 the obligations were assumed by -- perhaps the company didn't
23 have them anymore, but the obligation was picked up either by
24 a purchaser or a joint venture or some other party?

25 A. Are you talking about the Ford/General Motors

1 reference?

2 Q. No, I'm in 56 right now.

3 A. Oh, I'm sorry. Yes, I just know that they have
4 eliminated or proposed to eliminate in this in this case, and
5 I don't know about who took over an obligation, whether there
6 was a VEBA.

7 Q. Or any --

8 A. Or any other.

9 Q. Anything else, cash payments or -- and, okay.
10 And then in the next paragraph, 57, we're back to some
11 bankruptcy examples and you include Bethlehem Steel. Again,
12 are you familiar with any of the details?

13 A. No.

14 Q. And Georgetown Steel we covered. What about
15 LTV?

16 A. No.

17 Q. No details. Okay. Tower Automotive?

18 A. I am familiar that there was a VEBA in that
19 case.

20 Q. Do you know whether that was a negotiated
21 resolution?

22 A. I am not for sure. I think it might have been
23 negotiated but I don't recall.

24 Q. And again, just with respect to Bethlehem, we
25 covered Georgetown, do you know whether that was a negotiated

1 resolution or court imposed?

2 A. I don't know.

3 Q. You don't know. Okay. What about National
4 Steel?

5 A. I don't know.

6 Q. Wheeling Pittsburgh we covered. How about
7 Weirton?

8 A. I don't know.

9 Q. Kaiser?

10 A. Again, I know there was a VEBA in that case but
11 I don't know how it came to be.

12 Q. Don't know if it was negotiated?

13 A. -- negotiated.

14 Q. Sorry. United Air Lines, any details?

15 A. No.

16 Q. Negotiated or not?

17 A. No.

18 Q. No as to both United and USAirways, just so the
19 record is clear.

20 So I gather your point in, I guess, paragraph 57
21 and then the corresponding paragraph 51 where you name the
22 companies that eliminated their retiree medical while they
23 were in the bankruptcy process, your point here is that these
24 are employers who, during the course of the bankruptcy,
25 eliminated the obligation. That's it.

1 A. Correct.

2 Q. That's your only point.

3 A. Correct.

4 Q. Has nothing to do with what happened to the
5 obligations, whether they were negotiated or not negotiated.

6 A. Correct.

7 Q. Okay. Whether the retirees received a claim or
8 other consideration for the -- in consideration of the
9 elimination?

10 A. Correct.

11 MS. CECCOTTI: Your Honor, I just need a couple
12 of moments to see if I have anything else.

13 (A pause in the proceedings.)

14 MS. CECCOTTI: Ah, yes, just a couple of other
15 questions.

16 Q. I think you discussed a VEBA proposal with
17 counsel in your direct examination. Your understanding of
18 the -- tell us your understanding of the company's proposal to
19 implement a VEBA.

20 A. Well, I know that there is a VEBA, has been a
21 VEBA discussed and I know that it, under the, I guess, one of
22 the proposals, it was about thirty percent. That's all I
23 know.

24 Q. Do you know thirty percent of what?

25 A. I think of claims.

1 Q. Well, let's, actually, it's in -- let's not
2 guess. You have something about it in your declaration. I
3 think it's paragraph 61. Yes, paragraph 61, where you relate
4 that Dana has proposed to contribute to the respective VEBAs a
5 monthly cash advance in 2007 which shall represent 30 percent
6 of the average monthly cost of providing retiree benefits to
7 eligible participants.

8 Do you know why it's a monthly cash advance?

9 A. I have no idea.

10 Q. You don't have any idea, advance against what?

11 A. No.

12 MS. CECCOTTI: I have no further questions, your
13 Honor.

14 MR. HAMILTON: Just very quickly.

15 REDIRECT EXAMINATION BY MR. HAMILTON:

16 Q. On Debtor's Exhibit number 34, tab B, second
17 column, you said you got that information from the MMPS survey
18 of a general population, correct?

19 A. Correct.

20 Q. And counsel for the unions asked you whether or
21 not you knew personally whether or not the personal claims
22 experience of Dana employees was any different. You said you
23 didn't know, is that right?

24 A. Correct.

25 Q. Are you aware of any facts that would lead you

1 to believe that the health of Dana employees is different than
2 the health of the general population?

3 A. No.

4 Q. If you wanted to confirm that Dana's experience
5 was comparable to the general population, who was the guy at
6 Dana you would ask that?

7 A. Bob Arquette, probably.

8 MR. HAMILTON: No further questions, your Honor.

9 MS. CECCOTTI: Your Honor, one piece of
10 housekeeping. We did have the detailed section from the
11 Kaiser study that we --

12 THE COURT: Section 8?

13 MS. CECCOTTI: -- yes, discussed right after the
14 lunch break. I gather this is not already a Debtor's exhibit,
15 because we don't have it in her book, and the unions would
16 like to mark that and offer it as our next exhibit number.

17 MR. HAMILTON: No objection, your Honor, all for
18 it.

19 THE COURT: Received.

20 MS. CECCOTTI: We'll mark it during an
21 appropriate break. Your Honor, in addition, because it was in
22 Dr. Mulvey's reliance materials, I would like to also mark the
23 December 2006 employee benefit research institute survey that
24 I questioned her about as well.

25 MR. HAMILTON: No objection, your Honor.

1 MS. CECCOTTI: Okay, we'll --

2 THE COURT: It was in, but restricted to the
3 cover page, right?

4 MS. CECCOTTI: Your Honor, frankly, the reliance
5 materials -- you relied on the entire document or just the
6 cover page?

7 THE WITNESS: I read --

8 MS. CECCOTTI: She read the whole thing.

9 THE COURT: Received.

10 MS. CECCOTTI: Thank you.

11 (The witness is excused.)

12 MR. TAMBE: Your Honor, the debtors would next
13 call Mr. Bob Arquette. Mr. Jimenez will be examining
14 Mr. Arquette.

15 MR. JIMENEZ: Your Honor, if I may approach, I
16 have a binder for your Honor and for the witness.

17 R O B E R T A R Q U E T T E , having been duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION BY MR. JIMENEZ:

20 Q. Mr. Arquette --

21 MR. JIMENEZ: -- your Honor, may I proceed? I'm
22 sorry?

23 THE COURT: Yes.

24 MS. CECCOTTI: Give us a second just to get
25 ourselves reorganized.

1 (A pause in the proceedings.)

2 Q. Mr. Arquette, where are you currently employed?

3 A. I work for the Dana Corporation.

4 Q. And when did you begin working for the Dana
5 Corporation?

6 A. In 1968.

7 Q. Could you please describe your employment
8 history during your 39 years with Dana Corporation.

9 A. Yes, I began work in 1968 as the mail boy for
10 the Spicer Transmission division Toledo plant located on
11 Bennett Road, which was also the home for the corporate
12 offices and several divisions at the time.

13 From there, I worked my way up to a job in the
14 factory where I was a machine operator, that was a union job,
15 and I briefly was a union steward, as a matter of fact. After
16 that, I was promoted to excluded employment where I became the
17 office employment coordinator at the same location.

18 I worked in that, what was then called the
19 personnel department, now called the human resources
20 department. Thereafter, I was promoted to the industrial
21 relations department at the corporate offices. Following
22 that, in 1974, I was promoted to what was then called
23 personnel manager, now called human resources manager, at the
24 Pottstown plant, where I worked as a human resources manager.

25 In 1978, I was returned to the corporate office

1 industrial relations department as the manager of industrial
2 relations, we also call that labor relations. I was then
3 promoted to the position of director of labor relations where
4 I was chief spokesman for the company in labor matters.

5 Then, in approximately 1990, I was asked to take
6 a position in what is called the Dana Benefits and Payroll
7 Services Group. In 19 -- I was appointed director. And in
8 1999, I was made vice president of the Dana Corporation
9 Benefits and Payroll Services Group. That position I've held
10 ever since.

11 Q. What are your current responsibilities as the
12 vice president, benefits and payroll services?

13 A. I oversee all workings of the department which
14 governs our group employee benefits, principally the tax
15 qualified benefit plans, healthcare plans, hospital medical
16 surge plans, dental, life insurance, pension plans, savings
17 plans, and other similar plans in place for groups of
18 employees.

19 I do not oversee pension investments or
20 investment management of assets, and I do not oversee what's
21 commonly referred to as compensation management and executive
22 compensation. Those things do not fall in my purview.

23 Q. How many employees currently report to you?

24 A. Nine.

25 Q. And has that number changed during the last few

1 years?

2 A. Yes, changed dramatically. Dana Corporation
3 began outsourcing certain of its services groups and in about
4 2004, the Dana Corporation outsourced certain human resource
5 management functions. Included in that outsourcing was many
6 of the functions that were performed in my department. At
7 that time, my authorized strength was 52 people, and we now
8 have ten of us, including myself.

9 Q. Have your responsibilities increased because of
10 the bankruptcy filing by Dana?

11 A. Oh, yes, very definitely. Work on these
12 proceedings takes up almost all my time now. In addition to
13 which, we have added the responsibility for Sarbanes-Oxley
14 compliance, which is a rigorous auditing exercise. We've also
15 had to take on the responsibilities for HIPPA privacy
16 requirements, as well as all the other things that we have to
17 do on a daily basis, in addition to which we've had to be the
18 overseers and supervisors of the outsourced company that's
19 IBM, and that's been sort of a difficult challenge since it's
20 begun.

21 So we're responsible to make sure that those
22 services are in line and it's -- it's a constant addition to
23 our workload.

24 Q. Have you had a role in connection with the
25 Debtor's process under Sections 1113 and 1114,?

1 A. A role, yes.

2 Q. Could you briefly describe your role in that
3 process, sir.

4 A. I've been asked to assist in providing
5 information and data. I've also been asked to assist in the
6 preparation of certain documents and cost and quantify the
7 items that the Dana Corporation proposes to reduce to achieve
8 cost savings.

9 Q. Mr. Arquette, if you could please take a look at
10 tab A in the binder I handed to you --

11 A. I see it.

12 Q. -- do you recognize this document?

13 A. Yes, it is. This is my declaration that I filed
14 in regard to these proceedings in the court.

15 Q. Did you help prepare your declaration?

16 A. Yes, I did.

17 Q. Was the information contained in the declaration
18 correct when you signed it?

19 A. Well, I need to make a couple of corrections.
20 In paragraph 1 of my declaration, it's mistakenly attributed
21 my time in the benefits and payroll services department in
22 1993. It actually began in 1990, as I had previously said.

23 Paragraphs 13 and 15, mistakenly attributed
24 what's called AD&D, or accidental death and dismemberment
25 insurance along with life insurance as something we provide

1 for retirees. In fact, we do not. We only provide retirees
2 with life insurance.

3 And then in paragraph 23, I believe it is,
4 mistakenly included the number of 5.75 million as the amount
5 of savings that could be attributed to migration of certain
6 union locations to HealthWorks, and I believe that number is
7 more correctly stated at 7.5 million.

8 THE COURT: What paragraph are you talking
9 about?

10 THE WITNESS: Twenty-three, sir.

11 Q. Other than the three items you've just
12 mentioned, is the information contained in the declaration
13 accurate?

14 A. Yes, it is.

15 MR. JIMENEZ: Your Honor, at this time I'd move
16 into evidence Debtor's Exhibit 1 which is the declaration of
17 Robert Arquette.

18 MS. CECCOTTI: No objection, your Honor.

19 THE COURT: Received.

20 (Debtor's Exhibit 1, received in evidence, as
21 of this date.)

22 Q. Mr. Arquette, with respect to the proposals
23 delivered to the UAW and USW, were active union employees, did
24 you play a role in that?

25 A. Yes, I did.

1 Q. What was that role?

2 A. Toward the middle or later summer. I assisted
3 Mr. Chris Bueter, our vice president of labor relations, in
4 assigning values to certain of the proposals that were being
5 prepared.

6 Q. If you could please take a look at tab B in the
7 binder, do you recognize that --

8 A. Tab B?

9 Q. Tab B, yes, this is Debtor's Exhibit 9.

10 A. I see it. Yes, that's a chart that demonstrates
11 estimated savings from modifications to union wage and
12 benefits.

13 Q. Looking at the chart, are there any items listed
14 there which you helped Mr. Bueter prepare?

15 A. Yes, there are. I helped prepare the estimates
16 for migration to HealthWorks 2007. The estimate for medical
17 inflation cost sharing, the estimate for modified life AD&D
18 benefits, the estimate for elimination of long-term
19 disability, the estimate for modification of short-term
20 disability, the estimate for modification to pension benefits,
21 and the estimate for Robinson 401(k) matching/other matching.

22 Q. Do you the amounts listed next to each of these
23 items represent your estimate of the annual savings debtors
24 could realize from these changes?

25 A. Yes, they do.

1 Q. Now, Mr. Arquette, which of the five facilities
2 that are still part of the Debtor's 1113 motion currently do
3 not offer HealthWorks to the union employees of those
4 facilities?

5 A. Only two. Henderson, Kentucky, and Marion,
6 Indiana. Otherwise, the union employees at the other
7 locations are already covered by HealthWorks. A certain
8 version of HealthWorks.

9 Q. Are there other facilities that are not part of
10 the 1113 motion that currently do not offer HealthWorks to its
11 union employees?

12 A. Yes. For instance, Lima and Pottstown.

13 Q. And have the debtors proposed to offer
14 HealthWorks at those facilities?

15 A. Yes, we have.

16 Q. With respect to Dana's U.S. non-union employees,
17 are these employees covered today under HealthWorks?

18 A. Dana's U.S. non-union employees are covered by
19 HealthWorks, yes.

20 Q. Now, a few moments ago, Dr. Mulvey testified and
21 gave a description of the Debtor's HealthWorks 2007 medical
22 plan.

23 Were you here to hear her testimony?

24 A. Yes, I was.

25 Q. Do you agree with her description of the

1 HealthWorks program?

2 A. Yes, she did a very good job of giving a general
3 description of the way Dana's HealthWorks program operates.

4 Q. Could you contrast the HealthWorks program with
5 the medical plan that's currently offered today to union
6 employees at Henderson and Marion?

7 A. Well, following up with what she said, the
8 HealthWorks program is a program that's called, generally
9 referred to as a consumer-directed program, meaning that we --
10 we're trying to establish a program that empowers the consumer
11 to play a much greater role in their health, as opposed to the
12 plans, the traditional plans that we have in place, for the
13 plans that you mentioned, which are basically sick plans.
14 They pay for benefits which employees are sick. We refer to
15 these as indemnity type plans, meaning they indemnify people
16 from loss which occurs when they incur hospital, doctor,
17 medical bills.

18 Typically, they include a deductible, a co-pay,
19 an out-of-pocket maximum and some portion of premium sharing.
20 Those are more traditional indemnity-type plans.

21 The plan that HealthWorks has constructed with a
22 health reimbursement account which grants people an amount of
23 money into an account each year, if they don't use it, it
24 rolls over to the subsequent years. We provide them with a
25 source of information so that they can determine their medical

1 procedures, they can check up on their physicians, they can
2 consult about hospitals and quality of care, and we teach
3 people to use these facilities and we encourage them to do
4 that.

5 We also provide flexible spending accounts both
6 for healthcare and dependent care, and we have a wellness
7 component in the HealthWorks plan that pays a hundred percent
8 of certain preventive and diagnostic procedures. So we
9 encourage people not to stay away from doctors and hospitals,
10 but to -- but for early discovery and detection and thereby
11 hopefully saving us money and contributing to their good
12 health.

13 Q. Is HealthWorks offered today at any of Dana's
14 unionized facilities?

15 A. It's offered to virtually all the union
16 facilities except the ones that I mentioned. We have a number
17 of union facilities, especially what we call the partnership
18 plants, that were established with HealthWorks and they
19 continue to have HealthWorks, even now that they are
20 represented by the union.

21 Q. Mr. Arquette, if you could please take a look at
22 tab C in the binder.

23 A. I see it.

24 Q. This is what's been marked as Debtor's
25 Exhibit 23. Do you recognize the document, sir?

1 A. Yes, this is a chart that's included in my
2 declaration. It's an estimate of annual savings arising from
3 changes and modifications that we have made prior to the
4 filing for Chapter 11, and the estimated annual savings for
5 each.

6 Q. Did these changes affect all Dana's U.S.
7 non-union employees?

8 A. Yes, they did.

9 Q. Including senior management of Dana?

10 A. Including senior management, yes.

11 Q. Do the numbers listed to the right of each
12 modification represent your estimate of the estimated annual
13 savings from these modifications?

14 A. Yes, except for three categories. Except for
15 the effective elimination of tuition reimbursement, except for
16 the category of head count reductions, and except for
17 eliminate gain sharing plan. Those estimates were supplied to
18 me by our HR group.

19 Q. Now, when were these changes implemented, sir?

20 A. These changes were implemented late in 2005 and
21 effective 1/1, 2006.

22 Q. Now, given the fact that they were implemented
23 in January 2006, do you know what these, these savings have
24 been factored into the Debtor's 2007 financial plan?

25 A. I believe they have, yes.

1 MR. JIMENEZ: At this time, your Honor, I'd move
2 into evidence Debtor's Exhibit 23.

3 MS. CECCOTTI: No objection.

4 THE COURT: Received.

5 (Debtor's Exhibit 23, received in evidence, as
6 of this date.)

7 Q. Mr. Arquette, if I could have you look at tab D
8 in the binder.

9 A. I see it.

10 Q. Do you recognize the document?

11 A. Yes. This is another chart that was included in
12 my declaration. And it is a -- an attempt at a brief
13 description of modifications and changes that we are making or
14 have announced to make and the estimated cost savings for
15 each.

16 Q. With respect to the modification of life
17 insurance benefits, which is the first item on the chart, has
18 this change already been implemented?

19 A. That change has been implemented 1/1/07.

20 Q. And what modifications were made to the life
21 insurance benefits?

22 A. The life insurance benefits referred to here
23 contained essentially in the HealthWorks plan, which prior to
24 1/1/07, issued an amount of life insurance to all employees
25 covered by HealthWorks in the amount of one and one half times

1 their base salary.

2 That was reduced to one times base salary.

3 Q. Is this change consistent with what's been
4 proposed for Dana's union employees?

5 A. Yes. It is.

6 Q. Did you calculate the estimated savings figure
7 for the right of this change?

8 A. Yes, I did.

9 Q. With respect to the next item on the chart,
10 short-term disability, has that change already been
11 implemented for non-union employees?

12 A. That change was implemented again on the 1st of
13 January 2007.

14 Q. And what modifications were made to the
15 short-term disability benefits of non-union employees?

16 A. Prior to 1/1, 2007, the short-term disability
17 plan had a seven-day waiting period and provided a benefit
18 which was graduated, beginning at one hundred percent of pay,
19 dropping down to 70 percent of pay on a schedule denominated
20 by service, ending with 22 weeks.

21 The changes that were made is that the seven-day
22 waiting period was lengthened to 14 days, and the benefit was
23 reduced to 50 percent for all weeks up to 22 weeks.

24 Q. Are these changes consistent with what's been
25 proposed to Dana's union employees?

1 A. They are consistent with what we are proposing,
2 yes.

3 Q. Did you calculate the estimated savings figure
4 to the right of this change?

5 A. Yes, I did.

6 Q. With regard to the next item on the chart,
7 "Elimination of long-term disability," has that change already
8 been implemented for non-union employees?

9 A. No, it hasn't. We have announced to our
10 non-union employees that we intend to eliminate the long-term,
11 the self-insured long-term disability plan that is contained
12 and explained the in the HealthWorks program, and replace it
13 instead with the, with an employee purchase of an insured
14 benefit which will be -- which will take effect on July 1st,
15 2007.

16 Q. And is this consistent with what's been proposed
17 for Dana's union employees?

18 A. Yes, it has.

19 Q. Did you calculate the savings figure to the
20 right?

21 A. Yes, I did.

22 Q. How did you arrive at the savings for the
23 elimination of long-term disability?

24 A. We took the entire group of claims that are
25 currently being paid which is approximately 540 persons, and

1 we valued the entire group of claimants, both by examining the
2 amounts that we're paying to claimants as income, and also
3 consulting our actuaries, Towers Perrin, on an appropriate
4 amount of cost that's allocated to this group for medical.

5 And that entire group, which is made up
6 predominantly of collectively bargained employees, about 95
7 percent, in excess of 95 percent of collectively bargaining
8 employees, we allocated a portion of that cost to the
9 non-union employees who have -- are still open to claim, and
10 those are persons who opened a claim since we filed for
11 Chapter 11.

12 So a small portion of the current claimants are
13 non-union employees. The rest are union employees and the
14 amount of savings that's estimated here is a portion of the
15 savings that we estimated for elimination of the program for
16 all employees, union and non-union.

17 Q. Approximately what percent of the total
18 employees that are out on long term disability are non-union
19 employees?

20 A. A little less than five percent.

21 Q. And do you know why there's such a large
22 disparity between the number of union employees and non-union
23 employees out on long term disability?

24 A. Yes. When we filed for Chapter 11, we
25 discontinued the benefits for all of the then-current

1 non-union employees who were receiving long-term disability
2 benefits, which was approximately 500 cases at the time.

3 Q. With respect to the next item on the chart,
4 "Modifications to pension plan," have those changes already
5 been implemented for non-union employees?

6 A. No, they have not. We have announced to our
7 non-union work force several times of our intention to freeze
8 the accumulation of future credited service effective July 1,
9 2007.

10 Q. Did you calculate the estimated savings listed
11 to the right of this change?

12 A. Yes, I did.

13 Q. Could you briefly describe the proposed changes
14 to the pension plan for non-union employees?

15 A. There are principally two pension plans, two
16 defined benefit pension plans in effect that cover non-union
17 U.S. employees. The principal and largest one is Cash Plus.
18 Cash Plus is a career average cash balance pension plan which
19 expresses the benefit in terms of a lump sum which was given
20 to employees on an annual statement. A notional account is
21 kept for every employee, and their lump sum is added to every
22 year by taking their service, their seniority or their service
23 times a level of contribution in a chart in the summary plan
24 description, we call that chart A, or the service credit
25 chart.

1 Service credits are then added to an account
2 every year and employees are given a copy of that statement
3 once a year at about this time of year.

4 In addition to which, employees like myself who
5 were employed at the time this plan was converted from its
6 former form to the current form, there's what's called a
7 transitional benefit. It's a small additional amount that's a
8 carryover from the old plan. Those two things are added to
9 employees' account balances every year, and that's stated as
10 their benefit.

11 The other pension plan, the other defined
12 benefit pension plan is the Dana Automotive Aftermarket Group,
13 or what we call D-A-A-G, DAAG plan, and that plan is more of a
14 final average pay plan which states a benefit in terms of
15 years of service times a formulation of the employee's base
16 pay; for instance, the highest three of the last five years of
17 pay. That benefit, then, is expressed as an accrued benefit
18 under that plan.

19 Q. The debtors have also proposed to modify the
20 pension benefits of union employees, is that correct?

21 A. That's correct. We've given the unions
22 proposals on freezing of future credited service under various
23 pension plans.

24 Q. And how do the changes you just described for
25 the non-union plans compare to the changes that have been

1 proposed for the union plans?

2 A. Well, actually, it would affect non-union
3 employees more severely. It's a difficult comparison to make,
4 but if you make an apples-to-apples comparison, if you take an
5 employee with the same service, earning the same wage,
6 retiring at the same time, employees covered under the union
7 plans, the typical union plans like the UAW master, would be
8 entitled to a greater basic benefit than would be generated
9 under the Cash Plus plan.

10 Q. Could you give me an example of how the changes
11 would impact the same type of employee?

12 A. Certainly. If you take the UAW master pension
13 plan, defined benefit pension plan, it's what we refer to as a
14 rate plan. In other words, the benefit is expressed as a rate
15 times years of service.

16 The rate in the current, or the current rate in
17 the UAW master plan is \$32.50. So for an employee who is
18 retiring at age 62, with thirty years of service earning,
19 let's say, is \$16 an hour, which makes little difference in
20 the union plan, would generate a basic benefit of \$975 a
21 month. Under the Cash Plus plan, that same employee aged 62
22 with thirty years service earning \$16 an hour, would have
23 accumulated an account balance roughly three times their
24 annual salary. So in this case, at \$16 annual salary would
25 amount to 32,000, amount in their account would equal roughly

1 \$96,000. The \$96,000 is available to the employees as a lump
2 sum payment, but to weigh that up, to make it match the value
3 of the employee who is retiring under the UAW master, you'd
4 have to convert it to an annuity, using a 6 percentage
5 inflation factor, which is generous, and consulting the
6 mortality tables, which the actuary would do, the RP 2000
7 table that is implicit in our pension valuations, you'd divide
8 the \$96,000 by twelve to reach an annual annuity, divide it by
9 twelve again to reach a monthly annuity, and that amount would
10 be approximately \$667, considerably less than that basic
11 benefit available to an employee under the UAW master plan in
12 similar circumstances.

13 Q. Now, you're entitled to receive a benefit under
14 Dana's pension plan, are you not?

15 A. I'm covered by the Cash Plus pension plan, yes.

16 Q. How would the freezing of future credited
17 service for non-union employees affect you personally?

18 A. Well, since I've got more than thirty years
19 service, I've reached the top level of credits, accumulation
20 by the chart. Which is roughly 19.2 percent of my base
21 salary, would be added to my notional account every year.

22 In addition to which, since I was employed when
23 the plan was converted, I'm also entitled to a transition
24 benefit, which by this time is small, but roughly I would be
25 entitled to absolutely in excess of 20 percent of my base pay,

1 pension earnings, added to my account on an annual basis.
2 When the company freezes the future accumulation of credited
3 service under this pension plan, that 20 percent will no
4 longer be added to my account. Instead, I will be given a
5 three-percent contribution, a three-percent contribution times
6 my base salary to a defined contribution plan in replacement.

7 Q. So the net result being, you would lose a
8 contribution of approximately 17 percent of your pay?

9 A. That's correct.

10 Q. With respect to the next item on the chart,
11 elimination of company paid physicals for executives, has this
12 modification already been implemented?

13 A. Yes, it has.

14 Q. Did you calculate the estimated savings
15 associated with this change?

16 A. Yes, I did.

17 Q. What about with respect to the next item,
18 conversion of life insurance benefits for executives, has that
19 already been implemented?

20 A. That has been implemented to the best of my
21 understanding. Certain high ranking executives are entitled
22 to an additional amount of life insurance which has taken the
23 form of what's called universal life. What is going on here
24 is, the company has ceased making annual premium payments to
25 those universal life policies in the amount of \$1.9 million,

1 thereby reducing the value of those life policies to the
2 executives who held them.

3 Q. Did you calculate the estimated savings
4 associated with this change?

5 A. No, I did not. That was supplied to me by the
6 compensation group.

7 Q. With respect to the next item on the chart,
8 Mr. Arquette, the implementation of a two-tier wage structure,
9 has this change already been implemented for non-union
10 employees?

11 A. Yes, it has.

12 Q. Would you briefly describe the two-tier wage
13 structure for non-union employees?

14 A. This is identical to the proposal that we've
15 given to the unions on two-tier. What this means is that for
16 non-bargained hourly employees, non-bargained hourly non-union
17 employees, we have put in place a lower starting wage, a lower
18 total wage so that persons who are hired to take the place of
19 persons who are left or who have left the organization, will
20 be hired at a lesser rate.

21 Q. Did you calculate the savings associated with
22 this change?

23 A. No, I did not. That was also -- no, that was
24 supplied to me by the HR group.

25 Q. With respect to the last item on the chart, work

1 rule modifications, have these changes already been
2 implemented?

3 A. Yes, they have.

4 Q. Could you briefly describe the work rule
5 modifications that have been implemented?

6 A. These are modifications to terms and conditions
7 of employment for non-union workers at all levels. It
8 includes reductions of holiday, vacation, but generally is
9 largely made up of changes and reductions in overtime premium
10 pay for non-union employees.

11 Q. Are these modifications consistent with what's
12 been proposed for union employees?

13 A. It's my understanding that they are, yes.

14 Q. Did you calculate the estimated savings
15 associated with these changes?

16 A. No, that number was also supplied to me by the
17 HR group.

18 MR. JIMENEZ: Your Honor, at this time, I'd
19 introduce Debtor's Exhibit 25 into evidence.

20 MS. CECCOTTI: No objection.

21 THE COURT: Received.

22 (Debtor's Exhibit 25, received in evidence, as
23 of this date.)

24 Q. Mr. Arquette, what is the status of retiree
25 medical benefits for non-union active employees?

1 A. We have informed our non-union active employees
2 in the U.S. who are otherwise covered by post-retirement
3 benefit programs, and not all employees are. We have ceased
4 offering these benefits to persons hired after January of '04,
5 I believe. But for those persons who are covered, like
6 myself, we've announced that effective April 1st, the program
7 will be eliminated.

8 Q. And what is the impact of this elimination on
9 you personally?

10 A. Well, the benefit is expressed as an account or,
11 again, a notional account balance. Years of service are
12 multiplied times a factor of 1,700, which was arrived at by
13 our actuaries years ago when we invented the plan, and that
14 is, that gives you an account balance which is then annuitized
15 into a flow of monies which would allow a participant, an
16 employee like me, to use to offset future retirement medical
17 costs.

18 In my case, with my years of service, I'm going
19 to round up to 40. The amount in my account is \$68,000, and
20 that will be eliminated April 1st.

21 MR. JIMENEZ: Your Honor, nothing further.

22 MS. CECCOTTI: Your Honor, I think in order to
23 proceed most efficiently, I have a few questions and
24 Mr. Levine has some questions. Would it be best for us to
25 proceed rather than take a lengthy break and try to

1 consolidate it?

2 THE COURT: Is this in lieu of a lengthy break?

3 MS. CECCOTTI: Yes.

4 CROSS-EXAMINATION BY MR. LEVINE:

5 Q. Mr. Arquette --

6 THE COURT: That was the seductive offer.

7 MR. LEVINE: I'm sorry, your Honor, I cannot
8 hear you.

9 MR. HAMILTON: Seductive offer.

10 Q. Mr. Arquette, you just talked about your
11 personal circumstances. And I just want to make sure I
12 understand what those are. What was your compensation in
13 2006?

14 A. In 2006, I forget what my total compensation
15 was, but my base pay is now \$200,000.

16 Q. \$200,000. Do you know if that's more or less
17 than the average union hourly employee receives at Dana?

18 A. Oh, I would guess it's more.

19 Q. And that's your base salary, is that correct?

20 A. That's correct.

21 Q. And what other compensation components, not
22 related to fringe benefits, are part of your total
23 compensation package?

24 A. I receive a car allowance in lieu of a company
25 car, which is a program we also eliminated a couple of years

1 ago.

2 And I'm eligible for a annual improvement
3 program which is a bonus program, and that maximum eligible
4 earning, I believe, is 45 percent.

5 Q. 45 percent of what?

6 A. Of base pay.

7 Q. So if your base pay was \$200,000 last year,
8 you're eligible for up to -- you were eligible for up to an
9 additional \$90,000?

10 A. That would be correct if that math works out,
11 yes.

12 Q. Under that bonus program?

13 A. Under that bonus program, yes.

14 Q. Do you know at this point how much, if anything,
15 you've received from that bonus program in 2006?

16 A. In 2006, we received approximately half of a
17 year's bonus payment.

18 Q. So in addition to your base compensation of
19 approximately two hundred thousand dollars, you also received
20 an additional approximate amount of \$45,000 from this bonus
21 program?

22 A. No, at that time I was in a bonus category of
23 eligible earnings of 25 percent, I believe, and we received
24 half of that payment at twelve-and-a-half percent.

25 Q. Now, is that bonus program available to

1 unionized hourly employees, that payment?

2 A. The bonus program that I'm in is not.

3 Q. And do unionized hourly employees have a car
4 allowance?

5 A. Not that I know of.

6 Q. What other components of your compensation
7 package are there, other than what you've already described
8 for calendar year 2006?

9 A. I'm not sure that I know of any others.

10 Q. Is it fair to say that an hourly employee making
11 less money without a bonus plan and without -- some of the
12 them without bonus plans, certainly not the kind of bonus plan
13 you have, and without a car allowance, will be impacted
14 differently by the proposed changes in the 1113 plan than
15 someone making the kind of money you made last year, is that
16 fair to say?

17 A. I would suppose that's a fair statement.

18 Q. Now, you have involved in human resources and/or
19 industrial relations with Dana for quite some time; is that
20 fair to say?

21 A. Yes.

22 Q. And you have been involved in collective
23 bargaining in that capacity, that fair to say?

24 A. Yes, when I was in the industrial relations
25 department, I became chief spokesman for the company, so, yes,

1 that would put me at the bargaining table, yes.

2 Q. You've been in the trenches, is it fair to say?

3 A. I think I was one of the people that dug the
4 trenches.

5 Q. So noted. And the retiree health benefits that
6 the company seeks to eliminate, are those the product of
7 collective bargaining agreements with the UAW and the USW over
8 time?

9 A. Certainly.

10 Q. And I noticed that in your declaration, you
11 refer to the fact that some retirees continue to receive
12 health insurance even though their plants have already closed;
13 do you recall making that representation in your declaration?

14 A. I don't recall in my declaration, but that's
15 certainly true.

16 Q. But you would agree with that statement.

17 A. I certainly agree with that, yes.

18 Q. And do you know why you would have included that
19 kind of a representation in your declaration? Why is that
20 significant, if at all?

21 A. Certainly, it's a point of interest. The Dana
22 Corporation continues to carry a significant burden, financial
23 burden to supply healthcare benefits and other benefits for
24 persons who no longer have a home plant. There's no
25 operation. We either sold the product, discontinued to

1 product, closed the operation, years ago.

2 Q. But they were also the product, those benefits,
3 the product of negotiated agreements that covered those
4 employees when their plants were in operation, isn't that
5 correct?

6 A. I would say that's correct.

7 Q. And when some of their plants closed, was there
8 effects bargaining leading to agreements which provided for
9 continued retiree health payments for some of those employees?

10 A. I think in the vast majority of plant closings,
11 there were effects bargaining, yes. Not all, but in the vast
12 majority.

13 Q. And that effects bargaining, at least on
14 occasion, is it fair to say resulted in agreements by the
15 company to uphold prior obligations to provide retiree health
16 insurance to its workers?

17 A. I think in general terms, or back in specific
18 terms, the effects bargaining would have concluded in
19 continuing the healthcare supplements, which contained the
20 provisions for certain retiree coverages, yes.

21 Q. Those were promises made when those plants were
22 closed, isn't that fair to say?

23 A. That's a fair statement.

24 Q. Now, also, you talk about how plants closed and
25 those employees in the United States who are now retirees,

1 continue to receive health benefits.

2 And some of the work that those employees have
3 done is now being done overseas, correct?

4 A. I'm not sure I can -- I know which work is being
5 done overseas. But I know that we have, we're a worldwide
6 company and we have operations in other countries.

7 Q. Is it fair -- I'm sorry?

8 A. -- produce products in South America and in
9 Mexico and in Germany and in the United Kingdom and in Canada
10 and a number of places, some places of which are not
11 necessarily cheaper.

12 Q. Is it fair to say that more work is done
13 overseas today, for Dana, than was done at any other time in
14 Dana's history?

15 A. I don't know that I'm qualified to make that
16 characterization.

17 Q. You don't know?

18 A. I don't know that, no. I know that we're still,
19 the bulk of our sales are domestic.

20 Q. Now, could you please turn to paragraph 7 of
21 your declaration. Let me know when you're there, sir.

22 A. I see it.

23 Q. Looking at the last sentence, and it says,
24 "While the total expense for 2006 for providing healthcare
25 coverage to active union employees slightly decreased as

1 compared to 2005, the total spent per active union employee
2 increased to eleven thousand and change, reflecting a 15.1
3 percent per employee increase; do you see that?

4 A. Yes.

5 Q. Now, the reason total expenditures went down but
6 employee expense at the same time went up is because there are
7 now less employees at Dana; isn't that correct?

8 A. Yes.

9 Q. And the head count data is, remains in flux,
10 isn't that fair to say?

11 A. That's fair to say, yes.

12 Q. So that in trying to negotiate an agreement, and
13 you've been involved in labor relations and collective
14 bargaining, isn't it fair to say that negotiations are
15 complicated by the fact that we don't know how many employees
16 will be covered by collective bargaining agreements ten months
17 from now, or 24 months from now; isn't it fair to say that?

18 A. In my entire career of bargaining, I've never
19 known it any other way.

20 Q. Right. In your entire career at collective
21 bargaining, have you ever been in an 1113 proceeding?

22 A. No, I have not.

23 Q. Do you now think that makes it easier or more
24 difficult to negotiate an agreement?

25 A. Oh, I think the collective bargaining agreements

1 are difficult enough to negotiate without these circumstances.
2 But I think if the parties put their mind to it, we can get
3 something done.

4 Q. But you would agree that it's more complicated
5 by the pendency of this proceeding, isn't it fair to say, as a
6 bargainer?

7 A. Certainly.

8 Q. Now, let's look at paragraph 8. Is the same
9 point to be made there, that is to say that the numbers that
10 you cite in terms of per-employee cost or disability benefits,
11 isn't the fact that the numbers have increased related to the
12 fact that the force has declined?

13 A. That's not exactly the way to look at that. But
14 the work force declining certainly has some major effect only
15 because the way we pay for these benefits is, we're
16 self-insured. In other words, we pay cash money for the
17 claimants who are receiving the benefit. We don't buy an
18 insurance policy from an insurer to insure these.

19 So the population would have an indirect effect.
20 Not a direct effect.

21 Q. Okay. Mr. Arquette, could you please turn to
22 Debtor's Exhibit 9, please. I'm sorry --

23 MR. LEVINE: -- and, your Honor, that is after
24 tab D in this looseleaf binder.

25 Q. Are you there, sir?

1 A. I see it.

2 Q. I believe you identify four items that you
3 played a role in estimating costs for: Migration of
4 HealthWorks 2007, medical inflation cost sharing, modification
5 of life, AD&D benefits, and modification of short-term
6 disability, is that correct? Are those items that you were
7 involved in making cost savings estimates for?

8 A. Well, there are more.

9 Q. Okay. You were personally involved in doing
10 more estimates on these items?

11 A. Yes. As I said in my testimony, migration to
12 HealthWorks all the way down to Robinson 401(k) and matching
13 in others.

14 Q. So it would include elimination of LTD,
15 modification of pension benefits, and the Robinson 401(k)
16 match?

17 A. That's correct.

18 Q. I'm sorry. I misunderstood your testimony. And
19 how did you calculate those various savings in terms of head
20 count?

21 A. Is there anyone in particular you want to ask
22 about?

23 Q. Well, did you do it differently for different
24 items?

25 A. Yes, it certainly makes a difference as to which

1 item we're talking about.

2 Q. Okay. Well, let's go to migration to
3 HealthWorks 2007. You come up with estimated first year
4 savings of seven-and-a-half million dollars, is that correct?

5 A. Yes.

6 Q. And that's just for moving unionized workers
7 into HealthWorks 2007?

8 A. Yes. Moving the unionized workers that are not
9 already on HealthWorks to HealthWorks 2007, yes.

10 Q. And that includes Lima and Pottstown, correct?

11 A. I'm not sure whether this particular -- I think
12 the number does include Lima and Pottstown.

13 Q. But Lima and Pottstown aren't part of the 1113,
14 isn't that correct?

15 A. I think that's correct, yes.

16 Q. So that debtors' Exhibit 9 doesn't break out
17 what the company seeks in savings from its 1113 proposal; is
18 that correct?

19 A. Only in that regard, I would say.

20 Q. Only in regard to the estimated first-year
21 savings for all of these items?

22 A. In the regard that it may include Lima and
23 Pottstown. Otherwise, it would be accurate.

24 Q. And how many employees were at Lima and
25 Pottstown as of December 31, 2006?

1 A. I don't remember the exact number.

2 Q. Order of magnitude?

3 A. I think between both of them, possibly six
4 hundred, thereabouts, five, six hundred.

5 Q. Were you present at court yesterday? I believe
6 you were.

7 A. Yes.

8 Q. Do you recall some of the law school math that
9 was going on?

10 A. I recall it, yes.

11 Q. By my partner, Mr. Simon, who made me add up
12 those numbers rather quickly without a calculator?

13 A. I remember that exercise.

14 Q. I believe we came up with approximately two
15 thousand employees at the five facilities where the 1113
16 proposal still applied; do you recall that?

17 A. I recall that.

18 Q. I think the number was about 1976, and we
19 rounded it off to 2,000. So you're talking about 2,600
20 employees approximately, 600 of whom that you used in this
21 calculation aren't even part of the Section 1113; correct?

22 A. That's correct.

23 Q. Law school math. That's about thirty percent,
24 correct? In other words, the Lima/Pottstown complement is
25 about thirty percent of the workers who are included in these

1 calculations?

2 A. Those numbers work out, I think, generally, yes.

3 MR. JIMENEZ: Your Honor, if I understand the
4 math correctly, the 2,000 related to the five plants that are
5 part of the 1113, not plants that are not part of the 1113.
6 So I'm not sure that the exhibit is correct.

7 THE COURT: He's going along with his testimony.
8 It's being broken out. I'll allow it.

9 Q. Now, a couple of questions, and again,
10 Ms. Ceccotti's proposal to split this examination might not be
11 the cleanest way to do that, but I will try and not step on
12 her turf so that you won't be asked the same question.

13 But turning to Debtor's Exhibit 23 which is
14 after tab C, in your binder, do you see that?

15 A. Yes.

16 Q. "Estimated annual savings arising from
17 pre-Chapter 11 sacrifices by the non-union active salaried and
18 hourly personnel."

19 A. Yes.

20 Q. As I understand it, for at least some of these
21 items, you are counting savings from actions taken in the past
22 as to these employees; is that fair to say?

23 A. I think all of them.

24 Q. And --

25 THE COURT: Defining past as pre-Chapter 11.

1 MR. LEVINE: Correct, your Honor.

2 Q. Do you know if Dana, in any of its motion papers
3 or in any of its negotiations, has gone to the unions and
4 taken the position, or taken the position with this court,
5 that sacrifices already made by the unions involved in the
6 1113 or otherwise, prior to 2006, should be taken into
7 account?

8 A. I have no knowledge of that.

9 MR. LEVINE: I have no further questions. And I
10 defer to Ms. Ceccotti, and I hope I haven't rained on your
11 parade. Thank you for your patience.

12 CROSS-EXAMINATION BY MS. CECCOTTI:

13 Q. Just a couple of more questions, going back to
14 tab B in Debtor's 9 and the calculation of the 7.5 dollar
15 figure related to the migration to HealthWorks, and I guess we
16 would then go back to paragraph 23 of your declaration. First
17 of all, just help me out a little bit here.

18 At the time that you're -- was the number always
19 7.5 and this is some sort of transcription error, or did the
20 number actually change between the time you penned your
21 declaration and the time Exhibit 9 was prepared?

22 A. I can't answer that. I don't remember.

23 Q. You don't remember.

24 A. No.

25 Q. Okay. How did you calculate what is now the

1 \$7.5 million figure?

2 A. By looking at the paid claims for persons
3 covered under plans other than HealthWorks, compared to paid
4 claims for hospital, medical, surgical, dental and drug
5 coverage for persons covered under HealthWorks, average to
6 average.

7 Q. How did you -- first of all, what year claims
8 did you look at?

9 A. The most recent twelve months ending at about
10 June of 2006, I believe, would have been -- that's the period
11 of time where we do an annual rating process, so we collect
12 data on claims paid in the twelve-month cycles.

13 That would have been a time where we would have
14 had ready data available on paid claims for a year.

15 Q. Okay. So in other words, that would be the paid
16 claims for employees at Henderson and Marion, correct?

17 A. Yes.

18 Q. And Lima and Pottstown?

19 A. I believe so. I think I'm right about that. I
20 don't remember exactly but I believe so, yes.

21 Q. Okay. By the way, you gave a brief description,
22 I guess, of the plan in effect at Henderson and Marion but not
23 Lima and Pottstown, which I recognize are not part of the
24 proceedings, but since the savings figure may include those,
25 I'd like to just ask you if you could describe briefly the

1 health plan in effect at Lima and Pottstown.

2 A. With the difference of the numbers, it's
3 virtually the same type of indemnity plan.

4 There is a deductible in place, there's a co-pay
5 in place up to an out-of-pocket maximum. The employees pay a
6 premium share out of their paychecks. And it's very similar
7 to the plan I described generally before.

8 Q. Are there in- and out-of-network options at
9 either location?

10 A. No, I don't believe there are under the plans I
11 just described.

12 Q. Not at Lima/Pottstown?

13 A. No. For the salaried workers who are covered by
14 HealthWorks, yes. But for the hourly workers, no.

15 Q. Okay. So you took the claims data for that
16 twelve-month period that you described, and I guess I just
17 need you to walk me through what you did. You took that data
18 which obviously were paid out under the current plans, and
19 tell me how you came up with the figure that represents the
20 potential savings.

21 A. Well, the difference in paid claims under both
22 plans, multiplied by what we knew about the number of persons
23 covered in the work force. One times the other.

24 Q. In other words, you took the number of -- okay.
25 So within the claims-paid data, you have some claims incurred

1 by single covered people, some incurred by family covered
2 people, correct? Do you break them down that way?

3 A. Yes, we do.

4 Q. Okay. And did you use the same breakdown when
5 you --

6 A. We would have used actual paid claims.

7 Q. Actual paid claims for the -- oh, I see. So you
8 just -- you took the HealthWorks design and you applied it to
9 the paid claims; is that in essence what you did?

10 A. No, we took actual paid claims under
11 HealthWorks, and since HealthWorks is our largest plan, the
12 sample population is what's called statistically significant.
13 It means, it stands on its own. If you try to replicate the
14 data you come up with almost the same identical data. The
15 population in the sample is large enough so that taking a
16 sample doesn't make any difference.

17 You take the entire paid claims for the entire
18 group and that's the average of the group. Adding or
19 subtracting lives to it doesn't change the averages all that
20 much. So we compared the paid claims averages under
21 HealthWorks, to the paid claims per capita under the -- under
22 the various population groups I have spoken of.

23 Q. And HealthWorks had been in effect for how long,
24 for the HealthWorks actual claims sample that you used?

25 A. It's in its third year.

1 Q. It's in its third year?

2 A. Third year, yes.

3 Q. So that sample we have included claims paid
4 under the in-network and out-of-network options. However the
5 claims came in is what you took, right?

6 A. Yes. By and large, the vast majority of our
7 claims paid under HealthWorks are paid as in-network claims.

8 Q. So people are getting whatever the advantage is
9 of provider discounts and the like, correct? In terms of the
10 claims.

11 A. Both our participants and the company is getting
12 advantage of network pricing, yes.

13 Q. Correct. Okay. And this is the plan, putting
14 aside the actual details because we won't bother shifting the
15 books around again, but in an in-network arrangement, somebody
16 is going to a doctor and will just shell out ten or fifteen
17 bucks, correct?

18 A. That's got nothing to do with in network or
19 out-of-network. In-network means that we contract for
20 specific prices with various doctors and hospitals who will
21 give us preferred pricing. Out-of-network physicians charge
22 whatever they please.

23 Q. Okay. But stick with me for a second. So in
24 the HealthWorks in effect in this table that you used,
25 somebody going to a doctor is submitting a claim or however it

1 gets done, simply for whatever the preferred, whatever the
2 negotiated rate is, correct?

3 A. That's right.

4 Q. They are not making a co-pay, nominal co-pay?

5 A. Well, again, the HealthWorks plan has a health
6 reimbursement account that would pay first.

7 Q. I see.

8 A. And those dollars are applied first and when
9 those dollars are expended, then the employee experiences a
10 deductible, and that's limited up to an out-of-pocket maximum
11 if they stay within network.

12 If the employee experiences a catastrophic
13 medical event, the company pays for all of it.

14 Q. Okay. Let me go back to the sentence that I
15 asked Dr. Mulvey about in paragraph 23 of your declaration,
16 which starts at the bottom of 12.

17 "These savings, although the debtors believe it
18 will take time and education of employees to achieve, can be
19 substantial."

20 Tell me what you meant when you stated that the
21 debtors will -- believe it will take time and education for
22 employees to achieve the savings?

23 A. Well, one of the key factors in HealthWorks is
24 the availability of medical information which we make
25 available to employees via the Internet, either through their

1 own homes, their own computers, or through company computers.
2 We contract with WebMD, a notable national source of medical
3 information, and gives them the ability to look up virtually
4 any medical malady that they may be dealing with, and also
5 have described for them medical procedures and included in
6 that is medical prices, what to expect should they go to the
7 doctor or hospital for a certain procedure.

8 And so what we were trying to do is get people
9 used to first investigating and looking into the sources for
10 information, taking that with them when they go to their
11 doctor or the hospital, so they are armed with enough
12 information so that they know about their own healthcare.

13 In addition to which, by paying the wellness
14 benefits, we're encouraging people to go to the doctors for
15 early detection. And so we provide a hundred percent paid
16 benefit for these wellness features.

17 Q. And for the locations where you had HealthWorks
18 in place for a while, how long has it taken for the company to
19 realize the savings?

20 A. It seemed as though when we put this in it was
21 very well received. It still has been well received, and from
22 our examination of paid claims data, it took less than a year.

23 Q. Looking at the location pre-HealthWorks and the
24 same location post-HealthWorks.

25 A. That's correct.

1 Q. And give me an example of your first-year
2 savings.

3 A. In our first year savings, we were virtually
4 able to eliminate the effects of medical inflation on a group
5 that was already included in HealthWorks. And at that time,
6 that was about 12, 13 percent medical annual inflation for the
7 country as a whole. Our medical inflation for the second year
8 following the first year was zero. We were able to keep our
9 paid claims level in the second year, identical for the first
10 year.

11 Q. The HealthWorks network, is that something that
12 HealthWorks itself runs or does Dana contract separately for
13 that?

14 A. It's a combination of many things. Dana has
15 built and administers several of its own networks. We have
16 contracted for the services of American Health Group, which is
17 a group of physicians who run a company that both are third
18 party administrator and contractor for networks, plus, in
19 addition, we contract with various national networks like, for
20 instance, the Beach Street Network. So where we can't build
21 one of our own, we find one and rent space on it, that's what
22 it's called in the trade, and we'll take advantage of local
23 networks already in place.

24 (Counsel confer.)

25 Q. You mentioned that HealthWorks is already in

1 place at a number of the facilities, unionized facilities, is
2 that correct?

3 A. That's correct.

4 Q. Where is it in place?

5 A. It's in place for the union workers at Fort
6 Wayne, Indiana. It's in place for the union workers at
7 Elizabethtown, Kentucky, it's in place for the union workers
8 at Auburn Hills. It's also in place for a number of other
9 union locations which you've already established

10 Q. By virtue of the collective bargaining agreement
11 with the applicable union?

12 A. Yes.

13 Q. And, so these were negotiated prior to the
14 bankruptcy, right?

15 A. Yes.

16 Q. When or for how long did they been in effect,
17 I'm sorry?

18 A. The Fort Wayne -- HealthWorks went into effect
19 for the Fort Wayne union workers I think a year ago. And many
20 of the other plants have been in effect since either the
21 plants has been opened or as long as HealthWorks has been in
22 effect, which is now -- that's now three years ago.

23 Q. Is, at those locations, the unionized locations
24 you just mentioned, is it the only plan in effect?

25 A. I'm sorry, I --

1 Q. Is it the only health plan in effect at those
2 locations?

3 A. Yes. HealthWorks is in effect at those
4 locations for salaried employees in what we call the 2007
5 version, and for the union employees, there are slight
6 differences in their insured benefits like life insurance,
7 AD&D, and disability. Otherwise, it's the same HealthWorks.

8 Q. Again, and those differences were the product of
9 negotiations?

10 A. Yes, they were.

11 MS. CECCOTTI: No further questions. Thank you.

12 MR. JIMENEZ: Your Honor, could I ask for a
13 two-minute recess before redirect?

14 THE COURT: Two minutes. We'll take a recess.

15 (Recess taken.)

16 THE COURT: Are you ready?

17 MR. JIMENEZ: I am, your Honor.

18 THE COURT: Gentlemen, we're proceeding.

19 MR. MAYER: I'm sorry, your Honor, I apologize
20 for the delay. We have two small questions which we think
21 it's appropriate to ask prior to redirect. We've been
22 conferring with the debtor over the appropriateness of asking
23 one of them, given it's potential sensitivity. I just need
24 thirty seconds to confer with my partner. Could I beg the
25 court's indulgence for an additional thirty seconds?

1 THE COURT: Go.

2 (A pause in the proceedings.)

3 CROSS-EXAMINATION BY MR. MORELAND:

4 Q. Mr. Arquette, Thomas Moreland for the unions.
5 Were you present in court for the examination of Mr. Bueter
6 yesterday?

7 A. Yes, I was.

8 Q. And do you recall his testimony that with
9 respect to the 1113 motion, the potential cost savings to Dana
10 if the motion is granted is 28 million?

11 A. I remember that line of questioning, yes.

12 Q. And is that figure in agreement with your own
13 understanding that 28 million is the savings that would be
14 realized if the 1113 motion is granted with respect to the
15 five plants that are included in the motion?

16 A. I don't have any reason to disagree with
17 Mr. Bueter's testimony, no.

18 MR. MORELAND: Thank you.

19 MR. JIMENEZ: Very quick.

20 REDIRECT EXAMINATION BY MR. JIMENEZ:

21 Q. Mr. Arquette, as you sit here today, you do not
22 know if the unions would be entitled to any claim at all if
23 the retiree medical benefits were terminated, do you?

24 A. I have -- I don't have knowledge of that, no.

25 MR. JIMENEZ: No further questions, your Honor.

1 THE COURT: Thank you, sir.

2 (The witness is excused.)

3 THE COURT: We'll take a ten-minute recess.

4 (Recess taken.)

5 MR. BENNETT: Debtors will call Professor
6 Michael Wachter.

7 May I approach, your Honor? We have a binder.

8 M I C H A E L W A C H T E R , having been duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION BY MR. BENNETT:

11 Q. Professor Wachter, could you begin by telling
12 the court about your current professional position, please.

13 A. Yes. My current position is, I'm the professor
14 of law and economics, the William B. Johnson Professor of Law
15 and economics at University of Pennsylvania Law School. I'm
16 also the co-director of the Institute For Law and Economics.

17 Q. Could you tell the court what your educational
18 background is, please.

19 A. My undergraduate degree is from Cornell in
20 industrial and labor relations. I received that degree in
21 1964. I then have a masters in economics and a Ph.D. in
22 economics from Harvard University in 1970.

23 Q. Could you give the court an idea of your
24 academic experience.

25 A. I came to Penn before I finished my Ph.D. by a

1 few months. So I came as a lecturer, then became an assistant
2 professor, became a associate professor with tenure in 1973.
3 Make sure I don't forget the decades. Became a full professor
4 in 1976.

5 In 1984, I became the director of the Institute
6 For Law and Economics, and then in 1997, left the teaching and
7 research for a bit and went to the provost's office where I
8 was the deputy provost for Judy Rodin when she was first
9 coming to Penn. I was deputy provost for two years and
10 interim provost for the university for the year after that.

11 Penn is a \$2 million a year operation and my job
12 in that capacity was working with the twelve deans in their
13 academic planning and budgeting. After I was through with
14 that in 1999, I decided for my last career move, I would start
15 teaching corporate law, and although I've continued to do a
16 lot of my research in economics and labor law, I now teach
17 corporate law and corporate finance. The corporate finance is
18 really the MBA type economics course, rather than a law
19 course.

20 Q. Could you give the court some idea --

21 THE COURT: Have you had courses in bankruptcy?

22 THE WITNESS: Excuse me?

23 THE COURT: Have you had courses in bankruptcy?

24 THE WITNESS: I have not, but I talk to the
25 bankruptcy experts all the time.

1 Q. Could you give the court an idea of what part of
2 your scholarship has concerned labor economics?

3 A. Over the years, certainly, about 75 percent of
4 my work, maybe even 80 percent, has been in labor economics.

5 Q. Could you give the court an idea of your
6 involvement as a government consultant?

7 A. Over the years, I consulted for a number of
8 government agencies in the 1970s. I was fairly active
9 consulting for the Department of Labor, occasionally the Board
10 of Governors, the Council of Economic Advisers. I stopped
11 doing that when I switched over to doing law and economics
12 because my interest base had switched a bit.

13 However, I became a consultant to the Postal
14 Service in 1980, involving their collective bargaining. They
15 had asked me to do a wage study in 1980. I did that study for
16 them and they then decided to use that in collective
17 bargaining. They did use it in collective bargaining, and
18 then I began to appear as their expert witness in all the
19 major interest arbitrations that have taken place between 1981
20 and basically the current year.

21 Q. You mentioned interest arbitrations. What are
22 those?

23 A. Well, basically, the difference from grievance
24 arbitrations, the interest arbitrations in setting wages and
25 benefits rather than -- for the entire unit rather than a

1 grievance that an individual worker might have.

2 Q. Other than these Postal Service interest
3 arbitrations, have you had any other involvement as a labor
4 economics expert in litigation matters?

5 A. I have over the years. Most recently, I
6 participated as an expert witness in a number of major
7 bankruptcy cases involving United Air Lines, Delta Airlines,
8 and Delphi and Tower Automotive. I also did studies for
9 USAir, but did not testify in that case.

10 Q. Okay. Do you have some familiarity with the
11 norms and standards for conducting a wage and benefit
12 comparability study?

13 A. Yes, I do. And some of my work really related
14 to the original postal contract was to help develop some of
15 those norms that are now used in comparability, and a number
16 of my articles in 1980 -- in the 1980s sort of developed how,
17 when to do a comparability analysis study.

18 Q. Have you used those norms and standards in
19 connection with in case?

20 A. Yes, I have.

21 MR. BENNETT: Your Honor, at this point, we
22 would tender Professor Wachter in as an expert in the field of
23 labor economics and specifically with regard to wage and
24 benefit comparable studies.

25 MR. DeCHIARA: Your Honor, we have no objection

1 to the witness being qualified as an expert in labor
2 economics. I just want to make clear for the record, we're
3 not agreeing that he's an expert in the United States auto
4 parts industry.

5 MR. BENNETT: Okay. I don't think that's a
6 limitation --

7 THE COURT: I don't see that that's a
8 limitation. He's recognized as an expert.

9 MR. BENNETT: Okay. Assuming he's qualified to
10 testify, we'll proceed.

11 THE COURT: He's qualified.

12 Q. Could you turn to tab A in your binder, which is
13 Debtor's Exhibit 8.

14 A. Yes.

15 Q. And tell the court just in very brief terms what
16 that is.

17 A. This is a study that I prepared for Dana on
18 doing a wage and benefit comparability study.

19 Q. And have you received any additional information
20 since this study was completed at the end of January 2007?

21 A. Yes.

22 Q. Could you tell the court what else you've gotten
23 since then.

24 A. We did not have completed at the time we had to
25 file the report the cost savings the company expected from

1 their benefits proposals. We also obviously did not have the
2 Voos and Helper reports and discovery depositions and the
3 discovery material that resulted from those reports and
4 depositions.

5 MR. BENNETT: At this point, your Honor, we
6 would offer Debtor's Exhibit 8.

7 MR. DeCHIARA: No objection.

8 THE COURT: Received.

9 (Debtor's Exhibit 8, received in evidence, as
10 of this date.)

11 Q. Just as a background question, here, step back
12 for a second, would you tell the court in broad terms, what is
13 a wage and benefits comparability study?

14 A. Wage and benefits comparability study is a very
15 core concept. What it does is, it takes, let's say, using
16 Dana as the obvious example, a look at Dana's employees, look
17 at their skill levels, look at the wages and benefits they are
18 paid, and compare them to private sector workers who are
19 comparably skilled and look at what wages and benefits are
20 paid across the private sector of the economy.

21 And then we calculate from that whether Dana
22 pays the market wage, which is the economy-wide wage, or pays
23 a wage premium, which would be a wage and benefits, a
24 compensation premium, a wage and benefits premium compared to
25 the market, or whether they have a deficit, that is, their

1 wages and benefits are below market levels.

2 Q. And why in general terms do you want to do such
3 a study?

4 A. The main reason besides an academic one that one
5 might want to just publish the articles, and I've done a fair
6 amount of that, is that for a firm that's in a competitive
7 labor market, whether or not it pays comparable compensation
8 is an extremely important part of their competitiveness.
9 Labor costs tend to be a very important and variable component
10 for different firms. Most firms, let's say in the auto parts
11 industry can buy the same capital equipment. Where they may
12 differ is in terms of their labor costs. That can be very
13 variable.

14 If a firm pays a wage premium and a benefits
15 premium, it will find itself in a less competitive position
16 because, by definition of what the market --

17 (Telephone interruption.)

18 THE COURT: You'll have to speak up.

19 Q. You'll have to speak up as well. The microphone
20 is not on.

21 A. Okay.

22 Q. We were talking about the need for a
23 comparability study and I think you had started to say that
24 that had something to do with the competitiveness of the firm.

25 Could you complete that thought, please?

1 A. Yes, I was saying it's a very important part of
2 competitiveness. Taking Dana as an example, if it pays a
3 premium compensation package, then a competitor can open up,
4 let's say, in the south, hire American workers, it's an
5 American plant, and underprice Dana with respect to the price
6 of the product because their labor costs can be considerably
7 lower than Dana, given, as I will show, the size of the
8 premium that they pay at least in some of their plants.

9 Q. And have you done a wage-and-benefits
10 comparability study in this case?

11 A. Yes, I have.

12 Q. And how long did that process take, in rough
13 terms?

14 A. The report itself, which had the initial study,
15 took roughly a month-and-a-half.

16 Q. Okay. And can you give us an idea, taking a
17 look first at Debtor's Exhibit 46, tab B, can you tell us
18 whether that's a chart that was put together at your
19 direction?

20 A. Correct, yes. This is my chart.

21 Q. And looking at that, you've got several
22 categories. One is wages and salaries, one is total benefits,
23 and one is total compensation.

24 Could you tell the court what that refers to?

25 A. Certainly. The wages and salaries are what one

1 gets paid in the check form after taxes. The total benefits
2 refer mostly to insurance. The big component there is medical
3 insurance. It also includes retirement plans.

4 If you add wages and salaries to benefits, with
5 benefits, you get total compensation.

6 So total compensation is sometimes referred to
7 as the all-in number, and then it has all the benefits and the
8 wage costs in it.

9 Q. Compensation is the big picture number?

10 A. Compensation is the big picture number. And the
11 key number for competitiveness because, as far as a firm's
12 ability to price products, what matters is its labor costs,
13 and that includes benefits as much as wages.

14 Q. Okay. And the category here that says, "Dana,"
15 on Debtor's Exhibit 46, where does that information come from?

16 A. That information I obtained from Dana itself
17 from their payroll files.

18 Q. And there are five particular plants that are
19 listed here. Auburn Hills, Fort Wayne, Lima, Marion and
20 Pottstown. Could you tell the court why there was a focus on
21 those particular five plants?

22 A. These were the five plants that --

23 (Brief interruption.)

24 THE COURT: Go ahead.

25 Q. You might, Professor, want to pull the

1 microphone just a tad closer to you.

2 A. It's working now?

3 Q. I think it is. Okay. We were looking at
4 Debtor's 46, the five different plants there, and I had asked
5 you, I think, why you had focused on those five particular
6 plants.

7 A. These were the five plants that have wage
8 reductions. We didn't have that much time to do the study.
9 We had to complete it for the deadline of the filing of the
10 report. And we decided to limit the study to the five plants
11 that had planned wage reductions.

12 Q. And do you know whether Lima and Pottstown in
13 particular are plants that are subject to the 1113 motion?

14 A. It's my understanding that they have a
15 collective bargaining agreement that has expired and is being
16 renegotiated.

17 Q. Did you visit any of these plants yourself,
18 Professor?

19 A. I did. I visited Pottstown, which is not that
20 far from my home in Auburn Hills during the last of the ice
21 storms that hit the Midwest and east.

22 Q. Could you tell the court just in brief terms
23 what you observed during the course of those plant visits.

24 A. Very generally, when I arrived, I spent some
25 time talking to the plant manager, perhaps for an hour or so,

1 maybe more. We then did a tour of the plant, visiting
2 essentially each of the workstations. Then we went back to
3 the plant manager's office and they gave me opportunities to
4 ask a whole set of questions, which I did, about the operation
5 of the plant, their ability to recruit workers. At Auburn
6 Hills, where there's a second tier, how that was working, and
7 all of the questions that were relevant to my study.

8 Q. Okay. Still looking at Debtor's Exhibit 46, the
9 next column there, next to the Dana information, the next
10 column there says, "Comparable private sector workers."

11 Could you tell the court what the source of that
12 information is.

13 A. The source of that is from the Bureau of Labor
14 Statistics of the Department of Labor.

15 Q. Why did you choose that source?

16 A. It's the authoritative source on wages. Also on
17 benefits, the employer costs of employee compensation are the
18 two components, the wage and benefit studies that I use in
19 most of my labor economics research.

20 Q. Now, did you have any involvement in the
21 selection of comparable worker positions for purposes of this
22 comparability study?

23 A. I determined them.

24 Q. And how did you do that?

25 A. Well, I worked with Chris Bueter, who is a, who

1 I believe has testified before the court. Chris in a sense
2 owns their classification system, and what I asked Chris to do
3 under my direction was to match the -- his job categorizations
4 into those of the national compensation survey.

5 We went back and forth on this a fair amount. I
6 closely validated all of the matches he did. A few of them we
7 talked about at some length. Two of them were changed. One
8 resulted in an upgrading of the skill, the other in a
9 downgrading of the skill.

10 THE COURT: Were they matched geographically?

11 THE WITNESS: No, they were matched -- my
12 concept is that we have a national labor market and they were
13 matched to the average compensation of comparable workers
14 across the economy.

15 Q. Okay. Just in terms of the categories of
16 workers, can you give the court an idea, a general description
17 of the categories of workers that are involved in this
18 comparability analysis?

19 A. Yes. Most of the workers at these plants are
20 production workers. And I forget exactly what the number, but
21 it's something like 70 percent of the workers at these plants
22 are production workers.

23 Of that 70, over 80 percent fit into the
24 category known as lathe operators.

25 Q. Okay. And --

1 A. Maybe I should mention the other 14 are
2 assemblers, mostly assemblers and balance technicians. There
3 are other few other of the semiskilled trades.

4 Q. Okay. We now get to the last part on the chart.
5 We've got the Dana information, we've got the comparable
6 private sector workers information. And then you've got a
7 category called, "Dana difference."

8 Could you explain to the court what that
9 represents.

10 A. Yes. That's -- that is the premium, and these,
11 the numbers are all positive so they are all premiums rather
12 than deficits, and they are calculated simply as a percentage
13 difference between the Dana wage and the comparable private
14 sector wage.

15 Q. Okay.

16 MR. BENNETT: We'll offer Debtor's Exhibit 46,
17 your Honor.

18 MR. DeCHIARA: No objection.

19 MR. MORELAND: Your Honor, on behalf of the
20 creditors' committee, we've had testimony that the Lima and
21 the Pottstown plants are not part of the 1113 motion. In
22 light of that, we would move to strike the portions of this
23 exhibit and Debtor's -- well, it's tabs B, C and D, Debtor's
24 Exhibits 46, 55 and 56, which deal with Lima or Pottstown as
25 irrelevant to this motion.

1 MR. BENNETT: Your Honor, it gives you actually
2 more information, it actually helps the court more.

3 THE COURT: We'll see where it's all subject to
4 connection, absolutely. The objection is overruled.

5 MR. BENNETT: Thank you, your Honor.

6 THE COURT: The document is received.

7 (Debtor's Exhibit 46, received in evidence, as
8 of this date.)

9 Q. Professor, could you tell the court whether you
10 have a familiarity with a concept called "quit rates"?

11 A. Yes, I do.

12 Q. And could you tell the court in substance what
13 you think of when you think of quit rates.

14 A. Quit rate analysis is something that I always
15 do, at least when the data are available, to validate what I
16 have found in terms of the existence of a wage premium.

17 A quit is a voluntary termination when a worker
18 leaves a firm, essentially to find another job. It's a
19 voluntary quit because the worker is going to another job. It
20 excludes workers who leave the firm to retire. It excludes
21 layoffs, and it excludes terminations.

22 So what we're looking at, then, are those people
23 who are essentially looking for what you might call better
24 jobs. And so it really provides them --

25 (Telephone interruption.)

1 MR. BENNETT: Shall I go ahead?

2 THE COURT: Go ahead.

3 Q. In broad terms, why do you want to do a quit
4 rate review?

5 A. As I stated, what's in the quit rate is the
6 people who were leaving essentially because they think they
7 can get a better job or one that they'd prefer.

8 What has been validated in an extensive number
9 of studies is that firms that pay high wages and benefits are
10 likely to have a very low quit rate because there isn't an
11 opportunity to get a better job. Where firms that pay more or
12 less market wages will have an average quit rate and firms
13 that may be in a deficit position will have a very high quit
14 rate.

15 So it's a way of testing the basic core results
16 from the wage and benefits comparability analysis.

17 Q. Have you done a quit rate study in this case?

18 A. Yes, I did.

19 Q. Okay. I'll have you turn to Debtor's
20 Exhibit 56, which is tab D in your binder. Could you tell the
21 court whether that was put together at your direction?

22 A. Yes, it was.

23 Q. And does this chart contain any revised
24 information as compared to your original report?

25 A. As it shows, Auburn Hills, we had some real

1 questions about the quit rate information that had been given
2 to us. We asked them to go back and validate it, looking at
3 each of the individual records of workers who had left the
4 plant and these numbers are then revised from the original
5 report.

6 Q. Okay. Now, this one at the top, looking at
7 Debtor's 56, gives you information from the private sector in
8 general, and the manufacturing industry; do you see that?

9 A. Yes, I do.

10 Q. And what is the source of data for those
11 categories?

12 A. This comes from the government. It's called the
13 JOLTS survey. It's a fairly recent data source that the
14 government has begun collecting. They used to collect it in
15 the 1980s, then they stopped collecting it, but it resumed
16 fairly recently.

17 Q. Now, you have information here from three
18 different years, Debtor's Exhibit 56 has 2004, 2005 and 2006.
19 Do you have a view as to whether any of those years are more
20 important in terms of your opinion on the significance of quit
21 rates?

22 A. We focus our attention on 2004, largely because
23 by 2005, the wave of bankruptcies in this industry had really
24 begun to bloom, and there was much more concern among the
25 employees, and logically so, you could imagine, that a worker

1 would be wondering, "Is my job going to continue, and maybe I
2 would take a worse job that I could count on rather than the
3 current job where I think I might be terminated."

4 So one would expect in those circumstances where
5 you fear that you may be terminated in your job, that you will
6 take another job, even if it's less attractive. So one would
7 expect the quit rates to go up the more talk there was of,
8 beginning with the Tower's bankruptcy, Delphi's bankruptcy,
9 Collins and Aikman's bankruptcy and knowing that Dana wasn't
10 making money.

11 Q. What about in terms of the situation of Dana in
12 particular, what would you expect over that period of time?

13 A. I would expect the quit rates to increase.

14 Q. And why is that?

15 A. Essentially because the workers that had other
16 opportunities would take them rather than face the risk of
17 losing their job.

18 Q. Now, looking at the information that you've
19 gathered here, the comparison between private sector
20 manufacturing and -- private sector and manufacturing quit
21 rates in that period, and then the quit rates at the Dana
22 facilities, can you tell the court whether you came to some
23 overall conclusion about the significance of that data?

24 A. Yes. The quit rates at these five plants is
25 considerably below that for the private sector, considerably

1 below that for the manufacturing industry. It's worth noting
2 in addition, since there are different categories of
3 employees, Dana has three categories of employees; the skilled
4 workers, the production workers, and the service workers. And
5 most of the quits are in the skilled category, which happens
6 to not pay a wage premium. The wage premium is in the support
7 workers, which I called service workers, and the production
8 workers.

9 So the quits we're observing are largely among
10 the skilled workers. In some of these plants, literally no
11 production workers quit, or maybe one a year.

12 Q. Okay. And does any of your analysis take into
13 account the inclusion of, in part-time workers, in the general
14 set of information from the private sector for the
15 manufacturing industry?

16 A. Dana does not have part-time workers.
17 Unfortunately for the comparison purposes, the JOLTS data does
18 have, it's a plant-wide measure. The private sector does have
19 in private, obviously, some part-time workers, and so we
20 downplayed that comparison. The manufacturing industry had
21 very, very few part-time workers. So it provides a closer
22 match.

23 Even in the private sector, there simply aren't
24 enough part-time workers to create that large of a difference
25 as exists between the private sector and the data plants.

1 Q. But if you focus just on the manufacturing
2 industry, where there are fewer part-time workers, what
3 conclusion do you reach?

4 A. If one looks down the chart for 2004, you see
5 the quits at Pottstown is 1.6 quits compared to manufacturing,
6 14.9. In Auburn Hills, which is a newer plant, the quit rate
7 was 7.5 percent, which is still half the quit rate for the
8 manufacturing industry.

9 MR. BENNETT: Your Honor, we'll offer Debtor's
10 Exhibit 56.

11 MR. DeCHIARA: Your Honor, if I may have some
12 voir dire on this document?

13 VOIR DIRE EXAMINATION BY MR. DeCHIARA:

14 Q. Professor Wachter, if I could ask you to turn to
15 page 24 of your report, and in particular, I'm referring to
16 table IV.4, to you see that?

17 A. Yes, I do.

18 Q. And it indicates that the 2006, or the 2005 quit
19 rate at the Auburn Hills facility is 20 percent, do you see
20 that?

21 A. Yes.

22 Q. And on Debtor's Exhibit 56, the 2005 quit rate
23 is 4.5 percent, about -- a fraction of that, correct?

24 A. Yes.

25 Q. And going back to page 24, the table in your

1 report indicates the 2006 quit rate is 38 percent; do you see
2 that?

3 A. Yes.

4 Q. And on Debtor's Exhibit 5, the 2006 quit rate
5 for Auburn Hills is 9.4 percent, do you see that?

6 A. Yes.

7 Q. Again, a small fraction of what it was in your
8 original report.

9 A. Yes.

10 Q. And who provided you these new percentages?

11 A. When I saw the percentages, I was curious about
12 them, and I asked Chris Bueter to check all the records in
13 that plant. The quit rate is not a number that most firms are
14 even familiar with in terms of differentiating between people
15 who are retiring and people who are leaving to find another
16 job.

17 And at the plant level, what I found in a lot of
18 the studies that I've done with a lot of the companies is that
19 you have to go back to whoever is collecting the quit rate
20 data and ask them, you know, questions as to whether they have
21 done it properly, and in Auburn Hills, they had simply
22 included too many workers who either had retired or had been
23 terminated, and had counted them as quits, because they had
24 done it as a quick request for our benefit.

25 We then had the other numbers checked as well.

1 Q. I'm sorry?

2 A. We had the other numbers checked as well.

3 Q. Did you ask Chris Bueter go back to the other
4 four plants and do the same analysis?

5 A. Yes, we did.

6 Q. Were you provided a breakdown at Auburn Hills of
7 how many of the original -- when you say in your original
8 report that there was a 38 percent quit rate, are you saying
9 there was a 38 percent attrition rate, in other words, there
10 was a 38 percent separation from employment rate, but only
11 some of that was made up of voluntary quits, was that your
12 understanding?

13 A. No, that's not my understanding. I think at
14 Auburn Hills, they had just muffed the job.

15 Q. And they muffed it by a magnitude of 4 or 5
16 times what it was.

17 A. If you don't know what you're doing, and that's
18 not surprising, 'cause it's a different concept, you can muff
19 it big.

20 Q. And they muffed it big.

21 A. They muffed it big.

22 Q. And when did they tell you that they had muffed
23 it big? When did you get this information?

24 A. I forget exactly. Obviously after this report
25 was filed.

1 Q. Your original report was filed, well, it's dated
2 January 31st, 2007. Does that help you place in time when you
3 got the updated report on the Auburn Hills quit rates?

4 A. Clearly after that date.

5 Q. But can you tell me with any precision more than
6 that when you received it? Was it in February?

7 A. I really do not know.

8 Q. Was it since the beginning of March?

9 A. If -- this is guessing, and I -- my guess is
10 that you don't want me to guess, but if I were guessing I
11 would guess that I got it in late February.

12 Q. Was that your best estimate, late February?

13 A. And that's a guess.

14 Q. Okay. And was there any, other than going back
15 and finding out they had been mistaken, there was no event or
16 development that had changed the facts as to the quit rate,
17 correct?

18 A. I'm not -- I don't understand the question.

19 Q. The quit rate at --

20 THE COURT: Your voir dire is degenerating into
21 a cross-examination.

22 MR. DeCHIARA: Let me get to the point, your
23 Honor.

24 THE COURT: Please.

25 MR. DeCHIARA: We have a detailed scheduling

1 order in this case that was ordered by the court, I think it
2 was actually drafted by debtor, provides quite clearly that
3 all exhibits need to be marked by March 9th, 2007. It has one
4 exception. That's for matters arising out of depositions that
5 were taken after that date. I think also, a common sense
6 exception that's not expressed would be for events that
7 occurred after that date.

8 This would fall into neither category. This is
9 information that the company could have gotten to this expert
10 at any time the before March 9th, and in fact, the witness'
11 best guess is that they did in fact get it to him before March
12 9th. Yet we got this exhibit over this weekend. We got this
13 on Saturday. And therefore, it's untimely under the Debtor's
14 own draft and this court's own schedule order and on that
15 basis, we object for its admission.

16 MR. BENNETT: If I may, on that score, this is a
17 no-harm-no-foul sort of situation. They decided they didn't
18 even want to take Professor Wachter's deposition. So -- and
19 they have had information on the backup for this for some
20 period of time. This is also, as far as it goes, something
21 that did come out over the weekend. This is the first time
22 they are telling us they think there's something inadequate
23 about the time frame associated.

24 MR. DeCHIARA: Your Honor, if I may, first of
25 all over the weekend, we provided as we were required to under

1 the scheduling order a written communication to the debtor
2 specifically preserving the objection as to the untimeliness
3 of all the post-March 9th exhibits, and I would include this
4 exhibit. So they have been on notice. The reason we're
5 raising the objection now is because this is when it's being
6 moved into evidence and whether or not we took Mr. Wachter's
7 deposition is entirely irrelevant.

8 THE COURT: Okay, he's given you a best guess.
9 And I don't see any great harm in allowing it. It's admitted.

10 (Debtor's Exhibit 56, received in evidence, as
11 of this date.)

12 MR. BENNETT: If we have Debtor's 56 in
13 evidence, I'll move on, your Honor.

14 DIRECT EXAMINATION BY MR. BENNETT (Cont'd.):

15 Q. Professor Wachter, did you have any involvement
16 in the formulation of the Debtor's proposals to the unions in
17 this case?

18 A. No, I did not.

19 Q. Have you had any involvement in the negotiations
20 involved in the case?

21 A. I had no involvement nor do I know what
22 particularly is going on.

23 Q. Have you had an opportunity to review the
24 proposals that were put forward to you?

25 A. Yes.

1 Q. And have you had an opportunity to analyze those
2 proposals with regard to a comparison to general market
3 information?

4 A. Yes. I had the information on the proposed wage
5 reductions in time for the filing of the original declaration.
6 So the evaluation of the wage reductions is there.

7 I did not have the cost savings they were
8 estimating for the benefits. And that came in after the
9 filing of the report and that is now contained in this report.

10 Q. Okay. Well, let me get you, then, to tab C in
11 your binder, Debtor's Exhibit 55. Could you take a look at
12 that and tell us whether that was put together at your
13 direction.

14 A. Yes, it was.

15 Q. And is any part of what we see here on Debtor's
16 Exhibit 55 equivalent to what we saw on the prior Exhibit, 46?

17 A. The match with the private sector is the same.
18 So the column, "Comparable private sector workers," those
19 numbers are the same between the two tables.

20 Q. Okay. And the data on the left side under Dana
21 matched up with the various plants, where does that
22 information come from?

23 A. This is the new data that subtracts from debtor
24 Exhibit 46, which is the current wages and benefits, it
25 deducts from the column 1 in that exhibit the cost of the

1 benefit savings per hour.

2 Q. Okay. And now, with that revision to the
3 information so that we're looking at the effect of the
4 proposals, what does the Dana difference on the right-hand
5 side, what does that represent?

6 A. With respect to wages, the proposal essentially
7 brings Dana's wages into rough comparability with the private
8 sector. There's one small positive number. There are a
9 couple of small negative numbers. And then there's a zero for
10 Fort Wayne.

11 Q. And with regard to overall compensation, what's
12 the effect?

13 A. The benefits, the cost of benefits is
14 significantly reduced from the current levels but not enough
15 to bring it into alignment with the private sector. The
16 result is a continuing substantial benefits premium that
17 results in a total compensation premium that varies from four
18 percent at Marion to fifteen percent at Pottstown.

19 Q. And based on that comparison, do you have an
20 opinion as to whether, if these proposals were implemented,
21 Dana would have an ability to retain a satisfactory workforce?

22 A. I don't think there's any question that they
23 would be able to attract and maintain a quality workforce.

24 MR. BENNETT: Your Honor, we'll offer Debtor's
25 Exhibit 55.

1 MR. DeCHIARA: Same objection, your Honor. We
2 received this over the weekend. The information in the first
3 column, there's no -- deals with the company's proposals.
4 There's no reason this information could not have been
5 provided to us, the unions, before the March 9th deadline.
6 And the second column deals with 2006 information that was
7 included in Professor Wachter's original report, so again,
8 it's untimely under the scheduling award.

9 MR. BENNETT: Well, half of what's there is in
10 his original report, the whole thing about private sector
11 workers. The other hand on the left-hand side, the wages part
12 was in his original report. The addition I believe is the
13 benefits part. That's it.

14 THE COURT: It's admitted.

15 (Debtor's Exhibit 55, received in evidence, as
16 of this date.)

17 Q. Do you have some knowledge, Professor Wachter,
18 of a two-tier wage system at any of the plants?

19 A. Yes, I do.

20 Q. What is the basis for your understanding about
21 the two-tier wage system?

22 A. First, what I learned from Chris Bueter in terms
23 of original discussions with him, what plants had an incentive
24 system, and then, from my -- I'm sorry, I misspoke there --
25 what firms had a two-tier, and then for my visit to Auburn

1 Hills, Auburn Hills is the one plant that's had a two-tier in
2 operation for some time, and some real experience in terms of
3 how that has worked out.

4 Q. Okay. I think you said what firms. Did you
5 mean what plants?

6 A. Yes, I'm sorry, what plants.

7 Q. That's fine. Just in broad strokes for the
8 court, to remind the judge, what is the nature of this
9 two-tier system?

10 A. The nature of the two-tier system enables Dana,
11 and specifically at two of the plants, to hire workers at a
12 lower wage than is paid to the incumbent workers. This is a
13 voluntary agreement that was worked out with the UAW. And in
14 my visit to Auburn Hills, which again has one of the two
15 tiers, and one that's been in operation for some time, the
16 plant manager talked, I have to say even eloquently, about
17 what his partnership with the UAW, and how this second tier
18 enabled him to expand production, expand employment, and has
19 made the firm, made the plant less unprofitable than it had
20 been before.

21 MR. DeCHIARA: Objection, hearsay.

22 MR. BENNETT: Okay.

23 Q. Well, do you have some understanding as to
24 whether the two-tier system has been successfully implemented
25 at the plants where it is in effect?

1 A. A lot of their production workers are two-tier
2 workers, and it's my understanding that the -- they've had a
3 very low quit rate from the two-tier workers.

4 Q. And what, if anything, is the significance of
5 that for your opinion?

6 A. I might mention just that Auburn Hills is the
7 one assembly plant in these five. The others are machining
8 plants. So what we have for Auburn Hills is clearly the
9 ability to hire assemblers who are very well qualified. The
10 plant manager said these people are every bit as good and
11 productive as the incumbent workers, they were a great
12 addition to the plant, and what it says is that, in a sense,
13 my estimate of the market wage may even be too high in the
14 sense that on the second tier, you can hire workers and
15 maintain them at a lower wage level.

16 MR. DeCHIARA: Your Honor, objection to the
17 statements of the plant manager going to the truth of the
18 matter. It's hearsay.

19 THE COURT: Well, it forms part of his opinion
20 and hearsay is admissible for an expert to testify to. It's
21 the basis for his opinion, and I agree with you, it doesn't go
22 to the truth of the statements.

23 MR. BENNETT: It goes to weight, actually. You
24 can cross on the subject.

25 MR. DeCHIARA: Your Honor, if I may refer the

1 court to Federal Rule of Evidence 73 which concerns the bases
2 of opinion testimony by experts, what it says is that hearsay
3 evidence can come in as a basis of an expert's opinion if it's
4 of a type reasonably relied upon by experts in the particular
5 field in forming opinions or inferences. There's been no
6 foundational testimony suggesting that Dr. Wachter, in his
7 experience as a labor economist, has ever done any sort of
8 research where he has interviewed plant managers to make
9 opinions regarding the productivity of the workers there.

10 MR. BENNETT: That can't possibly be the
11 standard. That you have to have written a study in order to
12 rely on it.

13 THE COURT: The objection is overruled.

14 MR. BENNETT: Thank you. I would note just for
15 the record when we get to it, their experts have used
16 information from union officials as the basis for their
17 opinions.

18 MR. DeCHIARA: And your Honor, I will note for
19 the record, as you will hear tomorrow, our expert has made her
20 career of interviewing workers about their work life.

21 MR. BENNETT: Okay.

22 Q. The charts that we've looked at so far, do any
23 of those charts include retiree insurance costs?

24 A. They do not.

25 Q. Do you have any information about retiree

1 insurance costs with regard to Dana's situation?

2 A. We do and they are in the body of the report, at
3 the plant level for these five plants.

4 Q. Do you have general industry information about
5 retiree insurance costs for purposes of doing a comparability
6 study?

7 A. Retiree insurance is unusual in the private
8 sector. Not many firms have it. The result is that the
9 government in its collection of data on private sector
10 benefits actually doesn't collect that as part of that data.
11 Therefore, we can't make a direct comparison with the numbers
12 published by the, in the ECEC report.

13 Q. Based on the information that you do have with
14 regard to Dana, does that affect your opinion in any way?

15 A. It has very little effect at Auburn Hills, which
16 has a relatively new plant and fewer -- relatively few
17 retirees. It has a substantial effect on the benefit costs at
18 the other four plants that have an older workforce. And many
19 retirees.

20 Q. Okay. We started talking about the experts for
21 the other side. Are you familiar with Professor Paula Voos
22 from Rutgers?

23 A. Yes.

24 Q. And are you familiar with Professor Susan Helper
25 from Case Western?

1 A. Yes, I should say I'm familiar with them
2 professionally in regard to some of these cases.

3 Q. Yes. Do you have some understanding of what
4 their role is in this case?

5 A. They are the union's experts.

6 Q. And were they also involved in the Delphi case?

7 A. Yes, they were in union's experts in the Delphi
8 case as well.

9 Q. And did you give some testimony in the Delphi
10 case?

11 A. Yes, I did.

12 Q. And did you conclude that there was a
13 compensation premium at Delphi?

14 A. Yes. I concluded there was a considerable
15 compensation premium at Delphi.

16 Q. Did you use methods that are similar to the
17 methods that you used here?

18 A. Yes. The same.

19 Q. And did Professors Voos and Helper disagree with
20 you?

21 A. They disagreed with me there, as they disagree
22 with me here, saying in various different ways that the
23 workers here do not have a wage and benefits premium and that
24 was their conclusion in that report as well.

25 Q. Did the court in Delphi ultimately render some

1 opinion resolving this dispute between the experts?

2 A. It's my understanding, I haven't followed this
3 very closely, but it's my understanding that in none of the
4 cases that I have testified in was there ultimately a court
5 ruling. Instead, what has normally happened is, whether in
6 the middle of the trial or at the end of the trial, the
7 parties have a settlement. That I do not believe has been
8 completed yet at Delphi, although there's been progress
9 towards that.

10 Q. Have you learned any additional information
11 about the Delphi situation that is significant for your
12 opinion?

13 A. Yes. First of all, it was a buyout of some of
14 the workers at Delphi. And second of all, Delphi has become,
15 being pursued by two private equity firms who are --

16 MR. DeCHIARA: Your Honor, I'm going to object
17 to this line of testimony. There's no foundation for this
18 testimony.

19 THE COURT: I'll hear an explanation but I'm
20 inclined to sustain your objection.

21 Q. What do you know about that situation at Delphi,
22 is that from the financial press and other sources describing
23 developments related to Delphi?

24 A. That and the fact that, through the Institute
25 for Law and Economics, I have a fair number of private equity

1 people who are on the board and I talked to some of them about
2 it.

3 MR. DeCHIARA: Your Honor, in light of this
4 testimony, I'll change my objection to one of hearsay.

5 Q. Well, do you consider that information to be
6 reliable?

7 MR. DeCHIARA: Your Honor, I have an objection.

8 THE COURT: I'll allow it subject to connection.

9 Q. Do you consider that information to be reliable?

10 A. Yes. Some of it's been very much in the public
11 press a number of times. Certainly --

12 THE COURT: That doesn't make it reliable.

13 THE WITNESS: Excuse me?

14 THE COURT: Being in the public press doesn't
15 make it reliable.

16 THE WITNESS: Well, there have been reports of
17 negotiations where the private equity firms have been
18 interested in buying Delphi if they get wage and benefits
19 concessions. It's my understanding --

20 THE COURT: I'll sustain your objection.

21 MR. DeCHIARA: Thank you, your Honor.

22 Q. Okay. Have you read the Voos and Helper expert
23 reports in this case?

24 A. Yes, I have.

25 Q. And have you seen their depositions in this

1 case?

2 A. I've read their depositions, yes.

3 Q. And has anything in those expert reports and
4 depositions changed your opinion in this case?

5 A. Actually much of what they say is supportive of
6 my conclusions.

7 Q. Okay. Have you heard of something called the
8 "efficiency wage theory"?

9 A. Yes, I have.

10 Q. And do you have any idea of whether Professor
11 Helper is referring to the efficiency wage theory in her
12 expert opinion in this case?

13 A. Yes, she is.

14 Q. And could you give the court just a quick
15 summary of your understanding of that theory.

16 A. The efficiency wage theory very briefly is that
17 a firm may pay higher wages than the market, attract either
18 workers who are more qualified or workers who will work harder
19 and smarter, because they want to keep this job because it's
20 an above-market job.

21 Critical to the efficiency wage model to work
22 is, there has to be ease of termination. Because that's what
23 enables the firm to weed out the workers who really are
24 working harder and smarter from those who are not.

25 Q. And that concept of the ability to terminate

1 unproductive workers has an essential element of efficiency
2 wage theory, has that been validated at all in the literature?

3 A. Well, there are certainly theoretical models of
4 it. I'm not familiar with any theoretical models that don't
5 assume as a critical part of the functions of the efficiency
6 wage model and ease of discharge.

7 Q. Okay. Do you have a view as to whether the
8 efficiency wage theory can be applied to Dana?

9 A. It really can't be because Dana is a unionized
10 plant with a collective bargaining agreement and the discharge
11 mechanism is very different from the employment-at-will
12 mechanism, which you might think is good or bad, but is the
13 mechanism that is used in the efficiency wage model as the
14 mechanism of making sure that the firm gets these workers
15 within incentivized to work harder and smarter.

16 Q. You had mentioned before this two-tier
17 experience at Dana.

18 A. Yes.

19 Q. Does that relate in any way to your opinions
20 about the applicability of the efficiency wage theory?

21 A. Well, it goes to some of the comments of, I
22 believe both Voos and Helper that, if you were to reduce
23 wages, the workers would become less efficient. And what we
24 have in the two-tier experience are workers who are being
25 hired at really a substantial discount to current wages and

1 it's my understanding that they are every bit as productive as
2 the workers on the tier 1.

3 MR. DeCHIARA: Objection, lack of foundation,
4 hearsay.

5 MR. BENNETT: What's the lack of foundation?

6 THE COURT: Overruled.

7 MR. BENNETT: He has a firm understanding of
8 Voos and Helper.

9 Q. Separate issue regarding modeling of the
10 industry for purposes of the comparability study. Do you have
11 some understanding that Professors Voos and Helper have some
12 critique of your study in that regard?

13 A. Well, they have a number of different critiques.
14 Professor Voos in particular comes closest to doing a study
15 that looks like a comparability study even if she doesn't call
16 it that. And has a number of very specific comments about my
17 methodology.

18 Q. Now, does the market segment that Professor Voos
19 wants to focus on, how does that compare to the market segment
20 that you've looked at?

21 A. Well, Professor Voos' analysis is actually of
22 the beginning of all production workers, and she's doing
23 analysis of all production worker wages and in a match with
24 Dana.

25 My comparison is with the very specific workers

1 at Dana; namely, the lathe operators and the assemblers, who
2 I'm comparing much more narrowly to assemblers and lathe
3 operators in the private sector. So she has a much broader
4 comparison than I do. But then she moves from that to
5 suggesting that the right comparison from her perspective is
6 to focus entirely on the auto parts industry and the workers
7 and pay in the auto parts industry.

8 Q. Do you have a view as to whether focusing on
9 just that segment is appropriate?

10 A. I think it's a very bad idea. It's a bit like
11 holding up a mirror to yourself. Dana is a unionized plant, a
12 very large player in the field. There are other unionized
13 plants that in some ways are like Dana in having very high
14 wage premiums.

15 We know, and substantiated by some of the
16 reports of Voos and Helper, that there are lots of layoffs in
17 the industry, that employment is declining, that essentially,
18 the auto parts industry, particularly the unionized part of
19 it, is in a crisis mode. And I think comparing Dana largely
20 to the auto parts industry is just looking to continue the
21 problems that the firm is already in.

22 MR. DeCHIARA: Your Honor, I have an objection
23 to that last piece of testimony. The witness was not
24 qualified as an expert in the auto parts industry, and the
25 opinion he just rendered was an opinion on the state of the

1 auto parts industry. He's not qualified to render that
2 opinion.

3 THE COURT: You'll have cross-examination. I
4 know how to weigh testimony. Overruled.

5 MR. BENNETT: Okay.

6 Q. I'll ask you, Professor Wachter, to turn to tab
7 E in your binder. And you'll see there Debtor's Exhibit 57.

8 A. Yes.

9 Q. Have you read the various UAW statements that
10 are excerpted there?

11 A. Yes, I have.

12 Q. And what, if anything, is the significance of
13 those statements for your opinion?

14 A. It is clear that the union leadership recognizes
15 that there is a crisis in the automotive job market. All of
16 these go to a significant loss of jobs, thousands of job
17 losses. I think it's useful as a summary to read the last
18 statement from July 18, 2006, which is, I guess, roughly nine
19 months ago, where the union president said, "The brutal truth,
20 however, is that the U.S. has lost 240,100 automotive jobs
21 since February 2000. Most of these job losses have occurred
22 in the auto parts sector," which is where Dana is, "As
23 companies have increasingly outsourced their production to
24 Mexico, China and other low wage nations.

25 Q. Why is a --

1 MR. DeCHIARA: Objection. Your Honor, if that's
2 meant to come into the truth of the matter, I would object to
3 that statement as hearsay. It's not part of an expert opinion
4 of a labor economist. It's also, I would note, maybe I'm
5 jumping the gun here, your Honor, we have an objection to this
6 entire exhibit. I can save it until there's the moving it
7 into evidence or I can raise it now.

8 THE COURT: Raise it now.

9 MR. DeCHIARA: Okay. I have actually four
10 different objections to Debtor's Exhibit 57. First of all,
11 it's hearsay. It's a statement by a declarant who is not in
12 the courtroom, and he is not -- so it's hearsay. There's --
13 it contradicts the best evidence rule. The Federal Rules of
14 Evidence, and in particular, Federal Rule of Evidence 1006
15 says that you can have a summary of written texts when they
16 are so voluminous that it would be impractical to put the
17 entire text into the record. There's no indication that that
18 is a problem here.

19 And the danger, the reason we have that rule, is
20 that these statements could well be taken out of context. We
21 don't know what -- well, first of all, we don't know if these
22 statements are accurate, but even if they are, we don't know
23 what the UAW president said just before or just after that.
24 There's no context here. They are just lifted out of,
25 purportedly lifted out of text. So they are not best

1 evidence.

2 And lastly, again, they are hearsay and they don't
3 fall within the exception of the Federal Rules of Evidence
4 which allow an expert to rely on information that they
5 reasonably rely on in the course of their work. There's no
6 foundational testimony that Professor Wachter relies on the
7 statements of the UAW president about the state of the auto
8 parts industry in doing a comparability study. In fact, if I
9 could have just a second of voir dire is to ask Mr. Wachter
10 that question, your Honor.

11 THE COURT: Are you finished?

12 MR. DeCHIARA: I am with the statement. I would
13 like to have the question of voir dire.

14 THE COURT: I don't see the purpose of a voir
15 dire, because I'm going to rule on all your other arguments.
16 Let me hear the response.

17 MR. BENNETT: First, in terms of context, I
18 don't think Mr. DeChiara managed to look at the remainder of
19 tab because the backup for all these statements is immediately
20 behind it. This is a point of assistance for the court. If
21 Mr. DeChiara thinks we misquoted something or he wants to give
22 context, it's all there.

23 THE COURT: He has cross-examination.

24 MR. BENNETT: It's all there for the court. It
25 is an admission by the union and it does describe the state of

1 the auto parts industry. If Mr. DeChiara is going to insist
2 that somehow there's a narrow limit on information, here's a
3 source of information that this expert can rely on and give
4 the court some information about.

5 MR. DeCHIARA: Your Honor, I failed and my
6 colleagues have reminded me of yet another basis for objection
7 to this document. This was provided to us over this past
8 weekend, this document. You'll see the dates that are
9 provided to these quotes are from December 2005, January 2006,
10 July 2006, July 2006. There's absolutely no reason in the
11 world, when this company was gearing up to do its 1113, and
12 there's been testimony in this court that it spent months
13 gearing up for this process --

14 THE COURT: Counselor, this isn't Alice in
15 Wonderland. I think everybody here in the courtroom
16 recognizes that there are severe problems in the auto parts
17 industry.

18 MR. DeCHIARA: Your Honor, I'm not suggesting
19 that --

20 THE COURT: The documents are admitted. The
21 objection is overruled.

22 (Debtor's Exhibit 57, received in evidence, as
23 of this date.)

24 MR. BENNETT: Thank you, your Honor. At risk of
25 making a further statement after the court's ruled, all of

1 these things were shown to their experts in their depositions,
2 just for the record. Okay.

3 Q. Okay, let's go to tab F, please. And you'll
4 note that this one again has the backup of Debtor's
5 Exhibit 201.

6 A. Yes.

7 Q. And have you read the statement from Susan
8 Helper that is excerpted in Debtor's Exhibit 58?

9 A. Yes, I have.

10 Q. And could you tell the court whether that
11 statement has any significance for your opinion?

12 A. It certainly confirms what the union president
13 has said and as the judge has said, what really everybody
14 knows, that this is an industry in considerable trouble. Just
15 read -- to read her last comment, because of its relevance to
16 my testimony in support of my testimony, "However, given
17 stagnant demand for cars and continuing productivity
18 improvements, it is true that employment in the industry would
19 probably shrink even the absence of global competition."

20 Q. And why is that significant for your opinion?

21 A. What it goes to is the idea that it is relevant
22 to look exclusively or mostly at the auto parts industry. One
23 of the key concepts in economics is the opportunity wage or
24 what is the compensation that you can get if you were to leave
25 Dana and go elsewhere.

1 What Professor Voos is essentially saying is
2 that the wage you can get if you leave Dana is a wage
3 elsewhere in the auto parts industry. And I think what this
4 evidence indicates is that there really aren't jobs there.
5 That jobs are shrinking rather than increasing, so that the
6 ability to, if you're displaced from Dana, to land another job
7 in the auto parts industry certainly in this area of the
8 country, is very small.

9 Q. Okay.

10 MR. BENNETT: We'll offer Debtor's 58, your
11 Honor.

12 MR. DeCHIARA: Your Honor, I have the same
13 objections. If this, if there is the backup, there's no
14 reason to put in Debtor's Exhibit 58. Statements are taken
15 out of context. It's also hearsay, and I also note that this
16 is a statement from July 17th, 2006, many months before this
17 proceeding. There's no reason this could not have been
18 provided to the union by March 9th debt line as opposed to
19 over this past weekend.

20 THE COURT: It's admitted. I'll give it the
21 appropriate weight.

22 (Debtor's Exhibit 58, received in evidence, as
23 of this date.)

24 MR. BENNETT: Okay.

25 Q. Debtor's Exhibit 59 at tab G, please.

1 A. Yes.

2 Q. Have you read the presentation from Professor
3 Helper that is excerpted in this exhibit?

4 A. Yes, and I -- it is an excellent presentation.

5 Q. Okay. And what, if anything, is the
6 significance of that information for your opinion?

7 A. What this does is focus on another aspect of the
8 job losses in this industry. The earlier remarks had a lot to
9 do with losses to international competitors. Much of what is
10 going on in the industry is actually a shift from what is
11 sometimes called the rust belt to the southern plants that are
12 certainly U.S. plants but tend to be non-union.

13 Q. Okay. And do you have a view as to whether that
14 trend toward locating in southern areas is continuing in the
15 auto parts sector?

16 A. I think it's useful to actually look at some of
17 the specific pages from her report.

18 Q. You're going to Debtor's Exhibit 205, is that
19 right? The backup?

20 A. Yes.

21 Q. Same tab.

22 A. If you go to the page after Allied Automotive,
23 you begin to see some maps.

24 Q. Okay. And what's significant about that?

25 A. What it shows is that in 1980, virtually all of

1 the employment in this industry was located in Michigan, Ohio
2 and Indiana, with literally no plants at all in the southern
3 or western parts of the country. So it was right around
4 Detroit.

5 1980 by my counting is not so long ago. And
6 clearly, as shown in her other, as you go one by one, what you
7 see is the evolution of a nationwide auto parts market. So if
8 you get to 1996, while there still is considerable
9 concentration in Michigan, Indiana and Ohio, you now have
10 plants in the Carolinas, in Mississippi, in Tennessee, in
11 Oklahoma, in Missouri, in Texas, in Arizona, and California.

12 Q. Do you have a view, Professor Wachter, as to
13 whether there is a national market for labor related to the
14 auto parts industry?

15 A. As someone who has been a labor economist since
16 1969, when I began teaching at Penn, I've long been a firm
17 believer that the U.S. labor market is a national labor
18 market, and this is further confirmation of that. Jobs move
19 very readily in the American economy, and in a relatively
20 short period of time, this industry has restructured so that
21 much of, many of the jobs are outside of the traditional rust
22 belt states.

23 Q. Okay.

24 MR. BENNETT: We will offer Debtor's Exhibit 59
25 as an aid to the court, but we'll also offer Debtor's 205,

1 your Honor.

2 MR. DeCHIARA: Your Honor, the same objections
3 as before.

4 THE COURT: Received.

5 MR. BENNETT: Thank you, your Honor.

6 (Debtor's Exhibit 59, received in evidence, as
7 of this date.)

8 (Debtor's Exhibit 205, received in evidence, as
9 of this date.)

10 Q. Going down to tab H, Debtor's Exhibit 60. Have
11 you read the article from which this quote from Professor
12 Helper is taken?

13 A. Yes.

14 Q. And the information from Professor Helper
15 reflected there, does that affect your opinion in this case in
16 any way?

17 A. Well, it certainly doesn't change it. It's
18 further confirmation that the opportunity wage or for a Dana
19 worker, if this -- if Dana is not able to come out of
20 bankruptcy and restructure and there are significant job
21 losses, what Susan Helper is saying is that very few laid-off
22 workers will instantly find something equal to their skills
23 and former wages.

24 And as an academic like Susan Helper, we use the
25 term "instantly" when often we mean, you know, for many years.

1 Q. And why is that significant for your opinion?

2 A. Again, it goes to the question of whether it's
3 useful for Dana to hold a mirror up to its face and to do a
4 comparison of what looks like other Dana plants.

5 Q. Why do you say that's significant?

6 A. That's significant because, if workers lose
7 their job, they are not going to be able to find jobs in the
8 auto parts industry. They will have to find jobs elsewhere
9 and I provide an estimate of what I believe to be the wage and
10 benefits they at best will receive in their next best job.

11 MR. BENNETT: Your Honor, we'll offer Debtor's
12 Exhibit 60.

13 MR. DeCHIARA: Your Honor, this is a quote taken
14 out of a newspaper article. I would object on the basis of
15 hearsay. I would also object to the testimony to the extent
16 the article says nothing as far as I can see about the auto
17 parts industry.

18 MR. BENNETT: Your Honor, if you want to take
19 this subject to connection --

20 MR. DeCHIARA: And it's also from October 11,
21 2004.

22 MR. BENNETT: This is another one I actually
23 showed to Professor Helper, she said she had given the quote,
24 so obviously it's not hearsay in that regard since it's their
25 own expert, and if you need some connection for that, I'll

1 cross her on that subject.

2 THE COURT: I'll allow it subject to connection.

3 (Debtor's Exhibit 60, received in evidence, as
4 of this date.)

5 A. Perhaps I should add that it's clear that the
6 trend that she's talking about, both in this exhibit and the
7 prior one, has continued to the current time. As someone who
8 does follow this industry and the unionized sectors of the
9 American economy in general, it is certainly the case that
10 this trend has continued.

11 Q. Okay. Do you have some familiarity with a
12 critique from Professor Voos on the subject of size of firms
13 and size of plants in your study?

14 A. Yes.

15 Q. And have you done any comparison that controls
16 for that in your analysis?

17 A. Well, I don't think it's an appropriate control
18 variable, but my comparison group is, for production workers,
19 which are the bulk of the workers, are lathe operators and
20 assemblers. Virtually -- well, I shouldn't say virtually all.
21 The great bulk of those employees work in manufacturing.
22 That's where that kind of work is done.

23 So that my comparison is largely with
24 manufacturing operations and, in addition, most manufacturing
25 plants tend to be either mid size or large. And it turns out

1 that Dana's plants are the average establishment size for the
2 American economy. The result is, since I'm using average Dana
3 wages compared to average economy-wide wages for these
4 particular skill categories, I essentially have in it, sort of
5 baked in it, a, essentially a midsized firm comparison,
6 because the Dana plants -- I'm sorry, midsized establishment
7 comparisons because that's what the Dana plants are.

8 So her argument that I don't control for it,
9 although I disagree with the need to control for it, is
10 already in the data because of the nature of the comparison
11 group.

12 Q. Okay. With regard to another critique about
13 matching specific skill levels, are you familiar with that
14 critique from Professor Voos?

15 A. Yes, I am.

16 Q. And did you go back and direct that there be
17 some further analysis to respond to that after you got the
18 Voos report?

19 A. I did, although let me say it at the outset,
20 that I was surprised by the comment that I was not doing a
21 narrow enough comparison since my comparison is job to job,
22 lathe operators to lathe operators, assemblers to assemblers,
23 and her comparison is all production workers. So her
24 comparison group will control for skill and occupation, is
25 much broader than is mine. So one element of it is that she

1 really, in her study, and in her data and results, has a wider
2 comparison group than I do.

3 There is also a question raised about, even
4 within the narrow occupational categories that I have, namely
5 the lathe operators and the assemblers, whether the Dana
6 workers in these plants are more skilled than lathe operators
7 or assemblers in general.

8 I'm certainly familiar and have been with the
9 way these calculations are done by the Department of Labor,
10 and by firms that want to use their system. I had Chris
11 Bueter essentially do this for the lathe operators, and he
12 confirmed that the lathe operators, and I did not give him any
13 of the wage data, I simply gave him the sheets to fill out, he
14 filled out the sheets and what came out of that was the lathe
15 operators at Dana, not surprisingly, are like, on average,
16 lathe operators throughout the economy. Having been through
17 one of the plants where this is going on, this is the kind of
18 machinery you would expect to find in general in other plants.
19 These are what lathes look like and how they operate.

20 Q. Okay. You mentioned, I think, the comparability
21 analysis done by Professor Voos. Do you know whether
22 Professor Helper did any kind of comparability study?

23 A. If I could just interrupt for a second, I hadn't
24 actually finished on the last quote.

25 Q. Go ahead.

1 A. I also asked him about assemblers, and although
2 I did not have him do the matching, he said that assemblers at
3 Auburn Hills are less skilled than machining operators in the
4 other plants. When we think of assembly --

5 MR. DeCHIARA: Objection, your Honor, hearsay.
6 Your Honor, it's hearsay. This witness is saying what Chris
7 Bueter said. Chris Bueter was here to testify. He did not
8 testify to this. If the company wanted him to testify to
9 this, Chris Bueter should have been the one to testify so I
10 could have cross-examined him.

11 THE COURT: I'll allow it. He's here. If you
12 want to call Mr. Bueter again, you may.

13 Q. Go on.

14 A. I visited the assembly plant at Auburn Hills.
15 When we think of assembly plants and the movies that have been
16 made of assembly plants going back to the original Ford Motor
17 Company assembly plant, you have the idea of the piece moving
18 along an assembly line, and one worker doing one job under the
19 time pressure that it then goes to another worker who does
20 something else. None of of it gets tested as each worker does
21 his or her part. And it goes through a whole series of
22 workers and if one worker messes up, it could have a
23 significant impact.

24 At Auburn Hills, the assembly is very different.
25 One worker does the entire assembly of the drive shaft. It's

1 not a big piece of equipment. It is assembled there from
2 components, and is a very different kind of operation. It's
3 one person, essentially, doing it. It's not an assembly line.

4 In addition, in terms of testing, the machines
5 themselves provide instant tests. This is actually done by
6 the balance technician, of whether the drive shaft meets their
7 standards. And essentially, then, instructs the balance
8 technician in how to fix the problem. The more automated
9 equipment actually fixes it itself.

10 Q. Okay. On to comparability analysis done by
11 Professor Helper, do you know whether she did an actual study
12 on that subject?

13 A. Certainly, Professor Helper did not. She
14 talked around it but she didn't do an actual study.

15 Q. Okay. What about Professor Voos?

16 A. Professor Voos did not call it a comparability
17 study. But you can call it that. I mean, it had all the
18 ingredients of a comparability study.

19 Q. Okay. Just for information purposes, would you
20 turn to tab I.

21 A. Yes.

22 Q. And have you read this report from Professor
23 Voos?

24 A. Yes, I have.

25 Q. Okay. And could you get inside, please, to page

1 17? This is Union Exhibit 1, page 17, I think. Paragraph 36.
2 Do you see that?

3 A. Yes, I do.

4 Q. And now, you see a couple of numbers there. One
5 is \$26.11, and the other one is actually a range between
6 \$29.14 to \$31.41.

7 Could you tell the court your understanding of
8 the difference between those two calculations as performed by
9 Professor Voos.

10 A. Yes. First of all, let me say that I certainly
11 prefer my method for doing the comparability study --

12 THE COURT: You're not referring to the table.
13 You're referring to the text in paragraph 36?

14 MR. BENNETT: Yes, sir.

15 A. I think the way the assumptions are layered to
16 do the calculations, have some real flaws to it. But
17 accepting her number as, her first number of 26.11, she says,
18 this is the average for the goods-producing sector, average
19 total compensation of production workers.

20 So it's the all-in number in the sense that it's
21 total compensation, and her calculation is \$26.11.

22 Q. Okay. And then what's the comparison to the 29
23 to 31 number?

24 A. The 29 to 31 number is then, again, taking the
25 mirror to the face and saying, the only comparison group

1 should be the motor vehicle parts industry, and largely
2 because that industry is a heavily unionized industry, the UAW
3 is clearly one of the strongest unions and has been able to
4 bargain for some of the largest wage premiums.

5 A lot of what you're getting in the move from
6 26.11 to 29.14 to 31.41, which is her range for the second
7 number, is something like the union wage premium that you get
8 in the motor vehicles parts.

9 Q. Recognizing that you have some disagreement with
10 her overall methodology, if you had to choose between the 26
11 number and the 29 to 31 number, which of those do you think is
12 more appropriate?

13 A. For the reasons I've testified, I think the
14 comparison to the auto parts industry is a very bad comparison
15 given the state of the industry and the fact that workers are
16 not going to be able to easily find other jobs in that
17 industry.

18 Q. Okay. Now, could you please go back to tab B as
19 in boy.

20 A. Debtor's Exhibit 46?

21 Q. Yes, sir.

22 A. Yes.

23 Q. Could you take a look at that chart and, just in
24 rough terms, give us a comparison between Professor Voos'
25 numbers and the numbers that you found in your survey.

1 A. Her 26.11 again is a compensation number. It is
2 a kind of comparability study. I want to compare to it the
3 number that I actually reached for the private sector. And
4 what I, what you find, then, if you look at Debtor's
5 Exhibit 46, is a total compensation premium at Auburn Hills,
6 which is about \$24, but three of the other plants are actually
7 in the \$26 range. So that effectively, and I'm above her
8 number, so that even in a way her number is rougher than mine,
9 she has essentially reproduced my estimate of the compensation
10 of comparable skilled workers.

11 Q. And now, do the same comparison with the Dana
12 numbers, please.

13 A. Excuse me, can you ask that --

14 Q. Yes. It's pretty simple, just matching them up.
15 What is the comparison between her numbers and the numbers
16 that you derive for Dana?

17 A. Well, the obvious implication is that, what I
18 call the Dana difference, although the numbers would be
19 different, would lead to substantially the same conclusion.
20 So using her numbers, you would produce from that, that Dana's
21 current compensation has a sizeable premium compared to in her
22 categorization production workers.

23 Q. Okay.

24 A. In the goods-producing industries.

25 Q. Now could you go to tab C, Debtor's Exhibit 55.

1 A. Yes.

2 THE COURT: What you're saying, Professor, is
3 that, in Exhibit 46, taking your figures and her figures, you
4 come down to the same Dana difference?

5 THE WITNESS: Pretty much so, yes. I mean, my
6 numbers, my numbers vary from plant to plant. Because the
7 skill mix in each of the plants is different. And this is the
8 total compensation average is an average across different
9 skilled workers. So there's a different number for the
10 different plants. But they range from around \$24 to \$26.72,
11 and her number is \$26.11. So on our comparability study of
12 the private sector, using a much rougher methodology, she has
13 essentially replicated my results.

14 THE COURT: The premium percentages you say are
15 about the same?

16 THE WITNESS: Yes, that's correct.

17 MR. BENNETT: Okay. May I move to the next one,
18 your Honor?

19 Q. Just quickly, then, on Debtor's 55, this is
20 another one that shows a comparison to the numbers with the
21 11.13 proposals calculated, in terms of the effect on
22 compensation. How does that match up with Professor Voos'
23 numbers?

24 A. With the \$26.11 are you saying?

25 Q. Yes, sir.

1 A. With the \$26.11, you compare it to Dana's total
2 compensation and the first number for Auburn Hills would be
3 \$26.54, Fort Wayne would be \$29.03 if the proposals were
4 implemented, and what this shows is that her comparison group
5 says that Dana is essentially, would still be above market
6 even with the implementation of the proposals.

7 Q. Okay.

8 A. Because their total compensation will remain
9 above the \$26.11 figure.

10 Q. Okay. Last question. Having reviewed all of
11 this information from Professor Voos and Professor Helper, how
12 do those calculations affect your overall opinion in the case?

13 A. I view them as in general supportive. Not
14 surprisingly, we're studying the same industry. It's clear to
15 everybody that this industry is in crisis, that it's having
16 substantial job losses. This is unfortunately the third time
17 I've testified in a bankruptcy involving an auto parts
18 manufacturer. And what the result shows is that this is an
19 industry that's deeply troubled. If it cannot restructure
20 successfully, you have a great number of workers, many of them
21 at these plants are older workers in their fifties, in their
22 late forties. Except at Auburn Hills, it is an older
23 workforce. These people would find it very difficult to get
24 jobs elsewhere, certainly not in the auto parts industry,
25 perhaps not even as lathe operators or assemblers. They would

1 have to go elsewhere. Perhaps some of them wouldn't be able
2 to find jobs at all. But it would be a real hardship for
3 these workers if the restructuring is not successful.

4 Dana has got to be competitive in order to
5 survive in a highly competitive product market.

6 MR. BENNETT: Nothing further, your Honor.

7 MR. DeCHIARA: Your Honor, if I may have just
8 one minute to get my notes?

9 (A pause in the proceedings.)

10 CROSS-EXAMINATION BY MR. DeCHIARA:

11 Q. Good afternoon, Professor Wachter.

12 A. Good afternoon.

13 Q. My name is Tom DeChiara from the firm of Cohen,
14 Weiss & Simon. I represent the united Auto Workers and United
15 Steelworkers in this case. Have you had the opportunity to
16 review the declaration of Chris Bueter?

17 A. Excuse me?

18 Q. Have you had the opportunity to review the
19 declaration of Chris Bueter?

20 A. Yes, I did.

21 Q. Okay. I'd like to refer you to Mr. Bueter's
22 declaration.

23 MR. DeCHIARA: Your Honor, if I may approach the
24 witness. Your Honor, do you have a copy of the declaration
25 handy? I can provide --

1 THE COURT: If you could provide it, would it be
2 helpful.

3 (A pause in the proceedings.)

4 Q. Professor Wachter, if you could turn to
5 paragraph 17 of Mr. Bueter's declaration, it's on page 10, and
6 in that paragraph, Mr. Bueter says that one of the purposes of
7 the proposed wage cuts that Dana is proposing is, and I'm
8 reading the last line-and-a-half of the paragraph, "So to
9 bring the average hourly wage costs in line with" -- and
10 that's Dana -- "to bring the average hourly wage cost in line
11 with that being paid by other companies in the same industry."

12 Do you see that?

13 A. Yes.

14 Q. And what is that industry that he's referring to
15 as far as you know?

16 A. I presume it's the auto parts industry.

17 Q. So Mr. Bueter there is saying that one of the
18 goals of what the company is trying to achieve in this
19 proceeding is to bring Dana's wages in line with the average
20 wage costs being paid by other companies in the motor vehicle
21 parts industry.

22 A. That --

23 Q. So that, am I correct in my interpretation of
24 Mr. Bueter's declaration as far as you understand it?

25 A. No, it is not.

1 Q. And why is it not?

2 A. Chris Bueter is quite familiar with the fact
3 that his plant is losing business to other plants, including
4 plants in the south, and he is largely referring there to his
5 competitor costs of his actual competitors. Not being a labor
6 economist, when he talks about the average hourly earnings
7 being paid by other companies in the industry, he's talking
8 about his competitors, he's not talking about the average
9 wage.

10 Q. He's talking about his competitors in the motor
11 vehicle parts industry, correct?

12 A. He is doing that. But that --

13 Q. Is that correct?

14 A. That is correct.

15 Q. You answered my question, thank you. And did
16 you tell Mr. Bueter after you read this that comparing Dana's
17 wages to other competitors in the motor vehicle parts industry
18 was, what were your words just a minute ago, a very bad
19 comparison?

20 A. It's a very good comparison if you restrict the
21 comparison to the competitive firms. This is a comparison
22 that I did in the Delphi report as well. It's perfectly
23 legitimate, if you're looking at the market wage, what you
24 want to look at is the wages of your competitors who are
25 essentially maintaining market share and who seem to have

1 competitive wages and prices. You do not want to look at the
2 average of the entire industry that would include a lot of
3 your compatriot firms that are going out of business.

4 Q. So you're saying it does make sense to compare
5 Dana's wages to successful competitors in the motor vehicle
6 parts industry. Is that what you're saying?

7 A. Yes.

8 Q. You served as an expert in the United Air Lines
9 Section 1113 case, did you not?

10 A. Yes.

11 Q. And you prepared an expert report in that case?

12 A. Yes, I did.

13 Q. And you did a comparability study in that case?

14 A. Yes, I did.

15 Q. And in your comparability study in the United
16 Air Lines case, you compared various classes of United Air
17 Lines employees to other employees in the airline industry for
18 purposes of comparability, correct?

19 A. The comparison that we did in each of my
20 studies, the critical thing is identifying the market, the
21 relevant market where these firms are competing in terms of
22 the wage they need to pay to attract a qualified workforce.

23 The comparison that I did in the United report
24 for the -- to obtain the market wage was to look at the wages
25 paid by the regional airlines where the workers are doing

1 essentially the same work. A lot of the pilots that
2 eventually served at United Air Lines were hired out of the
3 regionals, and the regionals then provided an estimate of the
4 market wage of the successful, at that point, the growing
5 regional airlines that were taking market share from some of
6 the majors, what their labor costs were.

7 And in that sense, it's exactly the same as I
8 did in Delphi, and I would have done here if I had estimates
9 of the market wages of the low-cost competitors that Delphi
10 is -- that Dana is losing market share to.

11 Q. Just to be clear, your expert report in this
12 case has no comparison of Dana's wages to the wages paid by
13 other firms in the motor vehicle parts industry, be it
14 successful firms or less successful firms, correct?

15 A. That data was not available to me through Dana.

16 Q. So the answer is no, your report does not have
17 that information.

18 A. Yes.

19 Q. Yes, it does not.

20 A. Yes, it does not.

21 Q. Thank you. Let me show you what's been marked
22 as Union Exhibit 32.

23 (Document distributed.)

24 THE COURT: Are you going to refer to this
25 again?

1 MR. DeCHIARA: I may, your Honor, I'm not a
2 hundred percent certain.

3 Q. Is this your expert report in the United Air
4 Lines case?

5 A. Yes, it is.

6 Q. You testified a moment ago that when you did
7 your comparability study in that case, you compared the wages
8 of United Air Lines employees to the regional airlines in the
9 airline industry. Is that what you just said?

10 A. I have to check to make sure --

11 Q. I'm just asking what you just testified.

12 A. Yes.

13 Q. Well, let's turn to page 11 of your report in
14 the United Air Lines case, paragraph 37. Let me read the
15 first line. It says, "In performing comparability analysis,
16 we begin by comparing each United Air Lines employee group
17 with the same employee group of other major and National
18 Airlines."

19 Do you see that?

20 A. Yes.

21 Q. That's not the regional airlines, correct?

22 A. That's correct.

23 Q. Okay. And at that time, when you prepared this
24 report in United, the major airlines were going through very
25 difficult economic times, were they not?

1 A. And I refer to that --

2 Q. Please answer the question. Were they not?

3 A. Yes, and I refer to that in the paragraphs that
4 follow the one you quoted from.

5 Q. Okay. And there were many airline bankruptcies
6 in this period of time that you --

7 A. Yes, there were.

8 Q. But nevertheless, part of your comparability
9 study, there are other parts, but part of it was comparing it
10 to the other major airlines that were also going through
11 economic hard times, correct?

12 A. Um --

13 Q. Correct? Yes or no.

14 A. Yes, it was there but it was not used in the
15 same way.

16 Q. In your report in the Dana case, in this case,
17 you refer to the principal competitors of each of the
18 facilities, each of the five facilities that you address in
19 your report, correct?

20 A. Yes.

21 Q. And let's just take an example. Let me refer
22 you to paragraph 72 of your report. And there, the last
23 portion of the last sentence of the paragraph says that the --

24 A. Excuse me, I'm moving stuff to get to --

25 Q. I'm sorry.

1 A. Where do you want me?

2 Q. Your report in this case, page 26, paragraph 72.
3 Are you there?

4 A. I am indeed.

5 Q. The latter part of the last sentence of that
6 paragraph identifies the principal competitors of the Fort
7 Wayne, Indiana facility as AAM, Detroit Axle, Visteon and
8 another company with a long German name that's abbreviated as
9 ZF.

10 A. Yes.

11 Q. First, AAM, is that American Axle?

12 A. Yes.

13 Q. And how do you know that these are the principal
14 competitors of the Fort Wayne facility?

15 A. I was told that by Chris Bueter.

16 Q. Now, is this the same American Axle that
17 Mr. Stenger identified that has a benchmark financial
18 performance that Dana would like to achieve?

19 A. I'm not familiar with what Mr. Stenger testified
20 to.

21 Q. What do you mean by saying that companies are
22 the principal competitors of the facilities?

23 A. Simply that as, when I asked Chris Bueter who
24 were the other major firms in the industry, he identified
25 these.

1 Q. In the industry that the Fort Wayne plant
2 competes with.

3 A. That's correct, in the subsector where they --
4 where they compete.

5 Q. And they, so the Fort Wayne facility competes in
6 the same product market as these other firms, would that --

7 A. Yes, in terms of what Fort Wayne produces.

8 Q. Was that a yes?

9 A. Yes.

10 Q. Do you have any information about what the wages
11 paid by American Axle are to its production workers?

12 A. I know American Axle has just been successful in
13 getting a third tier, and is, part of its success is based
14 first on having a second tier and now having a third tier that
15 makes them highly competitive.

16 Q. Do you know what the average wage paid to the
17 entire body of the production workers at American Axle is?

18 A. I do not.

19 Q. Do you know the average wage paid by production
20 workers of any of these listed competitors on paragraph 72?

21 A. No, I do not.

22 Q. And rather than taking the time and going
23 through each of the five plants, you have a similar paragraph
24 for the four other plants where you identify the principal
25 competitors, do you not?

1 A. Yes.

2 Q. And if I asked you the same question about
3 whether you know the wages of the production workers at those
4 competitors, your answer would be you do not know, is that
5 correct?

6 A. That's correct.

7 Q. And if I asked you what the total compensation
8 was for the principal competitors, your answer would also be
9 that you do not know?

10 A. I do not know.

11 Q. That would, however, for purposes of doing a
12 comparability study, be particularly valuable information to
13 know, would it not?

14 A. I certainly wish I had had it. I wish I had had
15 it for all the competitors in the industry.

16 Q. By the way, do you know whether these
17 competitors, these principal competitors for the five plants,
18 are all economically successful firms or are some of them also
19 suffering hard times?

20 A. Certainly, Visteon is suffering hard times.
21 American Axle seems to be successfully restructuring. It is
22 the case that I have not looked into the details of these
23 other firms.

24 Q. So it's fair to say that, as far as you know,
25 some may be successful and others may be struggling; would

1 that be fair?

2 A. That would be fair.

3 Q. But nonetheless, it would be particularly
4 valuable in your view to have information on the wages and on
5 the total compensation as to all these competitors, correct?

6 A. All the competitors of Dana would be very
7 valuable to have that information.

8 Q. And in fact, in your report in the Delphi case,
9 you did provide as part of your comparability study
10 information about the total compensation paid by the
11 competitors of Delphi, did you not?

12 A. I did, and if I could just explain --

13 Q. It's just a yes or no question. You'll have a
14 chance to complain all you'd like on redirect --

15 A. I think my explanation might be helpful to
16 understanding --

17 Q. It may well be, but the way this works is, I ask
18 you the questions, and if you could answer them.

19 MR. BENNETT: Objection, your Honor.

20 THE COURT: I'll sustain your objection.

21 However, the professor is an attorney. I think --

22 Q. Just to clarify, you said you teach in the law
23 school of University of Pennsylvania. You do not have a law
24 degree, do you?

25 A. I do not have a law degree.

1 Q. You are not a lawyer?

2 A. I am not a lawyer and I never took civil
3 procedure or bankruptcy.

4 Q. Okay. Just wanted to clarify that. Now, in
5 your comparability --

6 A. Or Federal Courts, either.

7 Q. -- we'll stipulate there's a whole slew of the
8 law school curriculum that you did not take.

9 A. That's correct.

10 Q. Your position in this case is that the market
11 wage for Dana's union workers are the wages paid to comparably
12 skilled workers throughout the private sector of the entire
13 United States economy.

14 A. Yes.

15 Q. Is it not a fact, however, that Dana does not
16 compete in the same product market as the vast majority of the
17 firms in that private sector economy; is that not a fact?

18 A. They do not compete but they are part of the
19 relevant labor market.

20 Q. But they do not compete in the same product
21 market.

22 A. They do not compete in the same product market
23 but in terms of estimating --

24 Q. That was my question. You've answered my
25 question.

1 THE COURT: I'll allow him to finish the answer.

2 A. What is relevant for a comparability study is,
3 what is the best alternative wage that a lathe operator or
4 assembler can get. A lathe operator or assembler can work
5 throughout manufacturing plants, occasionally in other
6 industries as well, so what is relevant is the opportunity
7 wage that the worker has and that may not be with the
8 competitors. It may be with other growing firms that are
9 offering jobs that are being successful that are in different
10 parts of the country.

11 Q. Let me now refer you to table Roman numeral V.5
12 on page 33 of your report.

13 In this chart you're comparing what the average
14 wages of the workers at the Fort Wayne plant, how they would
15 compare to the private sector average after implementation of
16 the company's proposed changes, correct?

17 A. Yes.

18 Q. And the second column that says, "Private sector
19 wage," that's the average wage for the employees in the same
20 BLS, Bureau of Labor Statistics occupational category for
21 employees across the private sector economy, correct?

22 A. Yes.

23 Q. If you control -- now, I'm not asking you
24 whether you would want to do this or not, you've already made
25 your views quite clear on this; I'm just asking you, if you

1 did control that second column and limited it to employees in
2 the auto part industry, in other words the firms with which
3 Dana competes in the same product market, that number would be
4 significantly higher?

5 A. Perhaps. I mean, I don't know that for certain,
6 but given the numbers that have been reported by Professor
7 Voos, I would suppose so.

8 Q. And therefore, the last column, "Dana proposed
9 percentage difference," just as a matter of mathematics, if
10 the second column went up, the amount by which the proposed
11 Dana wages, the gap would increase, so for example, on your
12 analysis, under the company's proposal, the skilled trades
13 after implementation of the Section 1113 proposal would be 11
14 percent below the market wage; is that your analysis?

15 A. Yes.

16 Q. And if you controlled for the auto parts
17 industry, in other words increasing the number in that second
18 column, there would be more than eleven percent below the
19 market wage, correct?

20 A. Um-hum.

21 Q. I understand your view that you --

22 A. I was going to raise a different point, just --

23 Q. No, I'd like to you answer my question.

24 A. I was going to ask you to clarify what you meant
25 by "controlled" since the word "controlled" does not fit into

1 the kind of study that's being done here.

2 Q. You'll have to bear with me. I'm not an
3 economist, so I might not be using your sort of term of art,
4 terms of art that you use in your profession. But what I mean
5 is, if you limited it, if you took the entire set of employees
6 in that occupational group, but instead of going across the
7 entire private sector, you just limited it to those in the
8 auto parts industry, that's what I mean.

9 Now, can you answer my question?

10 A. As pure arithmetic, that would increase the gap.

11 Q. So it would be more than eleven percent below
12 inaccurate?

13 A. It would be more than eleven percent below
14 market.

15 Q. Now, Dana is a large firm, correct?

16 A. It is a large firm.

17 Q. Did you hear testimony earlier this afternoon by
18 another of the company's experts who described it as a jumbo
19 size firm?

20 A. I did not. I was back at the law offices.

21 Q. But it has, as far as you know, multiple tens of
22 thousands of employees?

23 A. Yes.

24 Q. And the BLS considers anything above a thousand
25 employees firmwide to be a big firm, correct?

1 A. That's correct.

2 Q. Or to say more precisely, to be a firm that's in
3 the biggest category that BLS tracks, correct?

4 A. Thank you for the clarification, that's
5 important.

6 Q. And I'm correct?

7 A. You are correct.

8 Q. Now, again, and as an empirical matter, is it
9 not true that large firms pay more in general than small
10 firms?

11 A. Well, we know that large establishments pay
12 more. That if you actually have both --

13 THE COURT: Does that apply to Wal-Mart?

14 MR. DeCHIARA: I'm sorry?

15 THE COURT: Does that apply to Wal-Mart?

16 MR. DeCHIARA: Your Honor, I don't know whether
17 it applies to Wal-Mart. I'm just asking the questions, your
18 Honor. I can ask the witness.

19 Q. Is it not an im --

20 A. It does apply to Wal-Mart.

21 Q. Let's try to get this in a question-and-answer
22 format. Is it not a fact, as an empirical matter, that
23 generally large firms, even controlling for establishment
24 size, pay more?

25 A. It has very little effect if you control for

1 establishment size.

2 Q. In the Delphi case, you submitted both an
3 initial report and a supplemental report, did you not?

4 A. I believe so. I don't recall exactly.

5 Q. Let me show you what's been marked as Union
6 Exhibit 30.

7 (Handing document to witness.)

8 Q. Does this refresh your recollection about
9 whether you did a supplemental declaration in the Delphi case?

10 A. Yes, the supplemental was to address the reports
11 of Drs. Voos and Helper.

12 Q. And let me refer you to paragraph 31 of this
13 document. It's on page 12. And in particular, the first part
14 of the second sentence, it says -- well, I'll read the whole
15 sentence. It says, "Large firms on average pay more than
16 small firms."

17 MR. BENNETT: Objection, your Honor.

18 THE COURT: I don't know where he's reading
19 from.

20 MR. DeCHIARA: I'm sorry, page 12, your Honor,
21 paragraph 31 of Professor Wachter's supplemental declaration
22 in the Delphi case. It's Union Exhibit 30. I'm reading the
23 second sentence.

24 MR. BENNETT: If you read it, read all the
25 words, please.

1 MR. DeCHIARA: I will do my best to that that.
2 It says, "Large firms, on average, may pay more than smaller
3 firms but there's no agreement or understanding as to the
4 precise reasons why that regularity occurs."

5 Q. Is it not true that, as a regular -- there's a
6 regular pattern that large firms on average pay more than
7 small firms?

8 A. Yes, but that's mostly captured by the
9 establishment size effect. So once you -- once you take into
10 account the establishment size, the plant size, the firm size
11 actually doesn't matter.

12 Q. By the way, in the Delphi case, the union's
13 experts made the argument that one should look at firm size or
14 control for firm size when determining market wage, correct?

15 A. Yes.

16 Q. And your paragraph 31 is in dispute of that
17 point, correct?

18 A. Again, your use of the term "control" doesn't
19 fit this case because there's no regression analysis. So the
20 control variable fits into the context of a regression
21 analysis.

22 Q. I'll use the word "limit," does that help?

23 A. Depends on how you use it.

24 Q. Let me ask the question again. The union
25 experts in the Delphi case made the argument that one should,

1 in determining the market wage, limit the set of firms one
2 looks at to large firms; correct?

3 A. I don't recall that exactly, but I certainly
4 could understand from what they have argued in general that
5 they would have said that.

6 Q. Okay. And in paragraph 31, are you not refuting
7 that point or attempting to refute that point?

8 A. I'm saying that once you have establishment
9 size, firm size doesn't matter. And that in general, we don't
10 know what causes the higher pay. The higher pay in larger
11 establishments may be due to a union wage premium. Larger
12 establishments tend to have a higher unionization rate than
13 smaller establishments. Critically also, all of this data on
14 firm size has no control at all for the skill mix in the
15 plant. And in -- or in the firm. And in general, the larger
16 the plant, you may have more skilled workers than you would
17 have in a tiny plant.

18 Q. In --

19 A. So there's no -- Dr. Voos argues persuasively
20 for the need to control for things like skill. There is no
21 such controls in this data, which is one of the reasons that
22 most economists think that they are not terribly useful in
23 comparability analysis.

24 Q. In paragraph 31, you do not make the point that
25 you're trying to make here, which is that, if you control for

1 establishment size, firm size doesn't matter, do you?

2 A. I have to read the rest of the paragraph --

3 THE COURT: Which I've been doing. I'm a little
4 bit surprised. You gave him one simple sentence, left the
5 rest of the paragraph out. And paragraph 32 is also probative
6 on the issue. Let's play a little square, counselor.

7 Q. Please, Dr. --

8 THE COURT: I know we can wait until his
9 attorney gets up to rehabilitate, but when you're asking the
10 questions, and I'm the trier of the facts, I expect to have a
11 more candid presentation.

12 MR. DeCHIARA: Your Honor --

13 THE COURT: Don't give me that one single
14 sentence when you know darn well there's going to be rebuttal
15 with the entire two paragraphs.

16 Q. Professor Wachter, feel free to peruse the
17 entire document.

18 A. The entire document or just 31?

19 Q. As much as you feel is appropriate. I do not
20 want at all to limit what you look at in answering my
21 question.

22 A. I don't want to start --

23 THE COURT: Well, don't give him one single
24 little line out of a whole page.

25 MR. DeCHIARA: Well, I was quoting --

1 THE COURT: And then tell him to look at the
2 whole document again, counselor.

3 MR. DeCHIARA: Your Honor, if I may explain --

4 THE COURT: Change the subject. Go on to
5 another subject. You're off base on this one.

6 MR. DeCHIARA: I'll move on.

7 THE COURT: Your tactic is improper.

8 MR. DeCHIARA: Your Honor, I --

9 THE COURT: This is not a game of gotcha.

10 MR. DeCHIARA: Your Honor, I'm not playing
11 gotcha. I --

12 THE COURT: Well then, fine, you've covered this
13 subject. Take another one now.

14 Q. Professor Wachter, let me go back to your table
15 5. If you could look at table 5, point 5, on page 33 of your
16 report.

17 A. Yes.

18 Q. Again, going back to the private sector
19 column --

20 A. Yes.

21 Q. -- whether or not you think it's a good idea to
22 do it, if you limited the set of firms that you looked at that
23 rendered that private sector wage document to firms that had
24 more than a thousand employees, that number would go up, would
25 it not?

1 A. Once I controlled for establishment size as
2 well, it would not go up.

3 Q. Okay, that's not my question, however. If you
4 limited it to firm size, the number would go up, would it not?

5 A. If you improperly limited it to firm size, which
6 is generally recognized in the academic literature as not the
7 way you should do it, you have to do establishment size and
8 firm size, there would be no difference because the
9 establishment size at Dana is fairly large and it mirrors the
10 overall economy. So there would be no effect on these
11 numbers. I appropriately -- if you wanted to control for
12 establishment size, there would be no effect on these numbers.

13 Q. Let me just try to clarify your answer without
14 the editorial comment. If, as a matter of looking at the
15 data, you limited the set to firms that had over a thousand
16 employees, that number in the second column on table 5.5 would
17 go up, would it not?

18 A. I'm sorry, would you repeat the question?

19 MR. DeCHIARA: Could the court reporter please
20 read back the question.

21 (Record read.)

22 A. Perhaps.

23 Q. You served as an expert witness for the United
24 States Postal Service in connection with the Postal Service's
25 interest arbitration in 1999 with the National Association of

1 Letter Carriers, did you not?

2 A. And all prior ones going back to 1981.

3 Q. Including one in '99?

4 A. Yes, that's correct.

5 Q. I think you testified earlier what an interest
6 arbitration is. Is it accurate to say an interest arbitration
7 is a legal proceeding to determine the terms and conditions of
8 a collective bargaining agreement where an arbitrator
9 determines those?

10 A. I don't want to get into legal definitions.
11 Certainly, as part of the proceeding, the arbitration panel
12 determines the terms of the collective bargaining agreement
13 that the parties themselves could not agree to.

14 Q. Right. And that's typical in public sector
15 labor relations?

16 A. No, it's not.

17 Q. But nonetheless, there was such an interest
18 arbitration that you participated in on behalf of the United
19 States Postal Service in 1999, correct?

20 A. Correct.

21 Q. And in that case, you presented a comparability
22 analysis.

23 A. Yes.

24 Q. And you argued that the letter carriers enjoy a
25 pay premium because their wages are above the average wage of

1 comparably skilled workers throughout the private sector
2 economy, correct?

3 A. Yes.

4 Q. And you also argue that the low quit rate of
5 letter carriers was further evidence of pay premium, correct?

6 A. Yes.

7 Q. In other words, very much the argument you're
8 making here.

9 A. Yes. The analysis that I've done here is the
10 analysis I've done all of my prior studies.

11 Q. And the experts for the letter carriers' union
12 argue that one should look at the wages paid by the Postal
13 Service's competitors like Fed Ex or UPS, correct?

14 A. Those are only two of the competitors that the
15 Postal Service faces.

16 Q. Nonetheless, the union's experts made the
17 argument that those were among the comparables that one should
18 look to, correct?

19 A. They picked out two very high pay -- high wage
20 firms and said, "Let's restrict it to those two high wage
21 firms."

22 Q. And comparability of pay for letter carriers is
23 mandated by federal law, correct?

24 A. Say that again? I'm sorry.

25 Q. Comparability of pay for letter carriers is

1 mandated by federal law.

2 A. Yes.

3 Q. So if your approach to comparability were
4 correct, the pay of letter carriers should have been reduced
5 as a matter of law to the average pay of comparably skilled
6 workers across the private sector, correct?

7 MR. BENNETT: Objection. Calls for a legal
8 conclusion.

9 THE COURT: I'll allow it.

10 A. I'm sorry, could you repeat the question?

11 MR. DeCHIARA: Could the court reporter plead
12 read back the question.

13 (Record read.)

14 A. No.

15 Q. Why do you say that?

16 A. That arbitration was almost entirely about
17 internal comparability between clerks and carriers. The
18 arbitration panel did not address the overall premium of
19 letter carriers. There was no refutation by the panel of the
20 existence of the premium. The panel only agreed to an
21 internal adjustment of the wages of clerks versus carriers.
22 In all prior NALC arbitrations that I participated in, where
23 the issue was wage comparability, there, beginning in 1981,
24 has been a pattern of what's called moderate restraint that
25 was acknowledged in 1981 that there is a wage premium and

1 subsequent arbitrations have been attempting to lower that.

2 Q. You argued in that 1999 arbitration, did you
3 not, that the letter carriers enjoy a pay premium over the
4 private sector average worker in the U.S. economy, correct?

5 A. Correct.

6 Q. To this day is it not true that the letter
7 carriers' pay has not been reduced to the private sector
8 average?

9 A. No, it has not yet been reduced to the private
10 sector average. It may get there but it hasn't gotten there
11 yet.

12 Q. It is currently above the private sector
13 average, correct?

14 A. Yes, it is above private sector average.

15 Q. In your --

16 THE COURT: And they get a uniform, too.

17 MR. SIMON: They pay for it.

18 THE COURT: They do?

19 MR. SIMON: There is a uniform allowance but the
20 uniform allowance does not cover the full cost of the uniform.

21 Q. In your comparability analysis in this case, you
22 say, you looked at comparably skilled workers throughout the
23 private sector economy, correct?

24 A. In this case, yes.

25 Q. And your study matches the job categories of the

1 various Dana plants to various BLS occupational groups,
2 correct?

3 A. Yes.

4 Q. For example, let's look at one of your charts,
5 if you would turn to page 20, there you matched, or -- I
6 wouldn't say you, but for purposes of your study, assembly
7 operator was matched to the assembler BLS occupation?

8 A. Yes.

9 Q. As were the balance technician and assembly line
10 leader positions?

11 A. Yes.

12 Q. And that matching was performed by Chris Bueter?

13 A. Under my direction, it was.

14 Q. And the BLS divides within a given occupational
15 category like assembler, there are work levels, are there not?

16 A. You can do that as a separate exercise if you
17 want to, yes.

18 Q. So in other words, you could further refine your
19 matching, correct?

20 A. Yes.

21 Q. And isn't it true that the BLS advises or
22 instructs employers who are trying to find a market wage to
23 utilize work levels?

24 A. I don't know that.

25 Q. Let me refer you to Union Exhibit 36. And let

1 me represent to you two things about Union Exhibit 36. One
2 is, it's an excerpt from a document that I printed off of the
3 United States Department of Labor website within the last
4 couple of weeks. And also, let me represent to you that it is
5 the same document but only an excerpt of Company Exhibit 185.

6 Can you identify what Union Exhibit 36 is?

7 A. It's an excerpt from the National Compensation
8 Survey report.

9 Q. Let me refer you to page 6, the last page of the
10 excerpt. The third paragraph on the left column, let me read
11 it. It says, "Within the blue collar group, earnings data are
12 presented for ten work levels. An average hourly earnings
13 range from nine dollars for level one workers to \$37.43 for
14 level ten."

15 A. I'm sorry, where are you reading from?

16 Q. I'm reading --

17 THE COURT: Middle of the page.

18 THE WITNESS: Okay.

19 Q. Do you see where I am?

20 A. Read it again?

21 Q. Yes, I'm reading from the third paragraph in the
22 left column.

23 A. Third paragraph -- okay.

24 Q. It begins with the word "within."

25 A. Yes.

1 Q. It says, "Within the blue collar group, earnings
2 data are presented for ten work levels and average hourly
3 earnings range from nine dollars for level 1 workers to \$27.43
4 for level ten."

5 Do you see that?

6 A. Yes.

7 Q. Is it fair to say, based on that statement from
8 the Bureau of Labor Statistics, that there is a sizeable pay
9 range within a given BLS occupational group based on work
10 level?

11 A. No.

12 Q. And why do you say that?

13 A. The point system that's being used by the BLS is
14 used for all workers for all different categories of workers.
15 So it would include a millwright, it would include a skilled
16 carpenter, an electrician. It would also include a laborer.
17 The idea is to have a single point system that can be applied
18 to all of these different trades.

19 The most skilled workers tend to come up at the
20 very high range of the scale that they are talking about. The
21 unskilled workers tend to be at the bottom, and the machine
22 operators and assemblers are somewhere in the middle. But the
23 kind of range --

24 THE COURT: Which is what's stated in the next
25 paragraph.

1 THE WITNESS: Excuse me?

2 THE COURT: Which is what is stated in the next
3 paragraph.

4 Q. Let me refer you to paragraph 20 of Professor
5 Voos' declaration. And let me point to you to --

6 A. Could you remind me of what tab are we --

7 Q. It's in, your booklet, it's tab I. And I'm
8 referring you to page 9. And let me refer you to the fifth
9 sentence. The one that begins, "For example." It's in the
10 middle of the page.

11 A. Yes.

12 Q. It says, "For example, although the average
13 earnings of an assembler in June 2005 was 14.95, the earnings
14 of an assembler at work level 7 was \$21.76, while that of an
15 assembler at work level 1 was less than half that, \$9.50."

16 Do you see that?

17 A. Yes.

18 Q. So is it not true that within a given
19 occupational category such as assembler, there's a wide
20 disparity in average pay based on what work level the worker
21 fits within; correct?

22 A. No.

23 Q. And why do you say that?

24 A. Because if you look at the average across all
25 assemblers, they tend to fall into just a few of the

1 categories. There are a couple of outliers. My guess is that
2 the outliers are probably misclassified. But if you look at
3 any of these categories, you tend to find a much narrower
4 range where the bulk of the assemblers are classified.

5 Q. Are you disagreeing that the BLS has a category
6 for assembler work level 1?

7 A. It has these categories for all occupations.

8 Q. It has work levels for all -- within each
9 occupation, correct?

10 A. For every occupation from the millwright down to
11 the janitor.

12 Q. And is it not true that the average pay within
13 each work level, within each of those occupational groups,
14 varies substantially?

15 A. Not -- certainly the -- if you look at the
16 average and then you look at the dispersion around the average
17 you get a fairly tight distribution.

18 Q. Do you challenge or dispute that those are
19 accurate, that that sentence in Professor Voos' declaration is
20 accurate?

21 A. Which sentence are you referring to?

22 Q. The one I read.

23 A. Could you read it again? I'm sorry.

24 Q. I'll just point to you. It's the one that says
25 "for example."

1 A. Yes. I presume it's accurate. I have no reason
2 to suppose it's not.

3 Q. Did you, when you were directing Chris Bueter to
4 determine, to match the Dana workers to BLS categories, did
5 you mention anything to him about the existence of these work
6 levels within an occupational category?

7 A. I did not.

8 Q. And did he provide you with any information
9 about the work levels within which the Dana workers in a given
10 occupational category, like assemblers, fell?

11 A. Not when we were doing the original analysis.
12 We talked about it subsequently a great deal.

13 Q. And did you talk about it after your report was
14 done?

15 A. Yes. We also talked about it while the report
16 was being prepared. We acknowledged, we talked about the
17 different assembler jobs and, you know, lathe operator jobs
18 and that there would be some differences across them.

19 Q. Did you use, did either of you use the word
20 "work level" in your conversation? Did you refer -- well,
21 I'll leave that as my first question.

22 A. To be more precise, we did not discuss this
23 aspect of the ranking system.

24 Q. Thank you. Let me refer you to page 21 of your
25 report.

1 A. Of my report. I'm sorry.

2 (A pause in the proceedings.)

3 Q. And in particular, let me refer you to table
4 IV.2.

5 A. Yes.

6 Q. And this table compares the current wages of the
7 Auburn Hills workers to what you deem to be the comparable
8 workers throughout the private sector, correct?

9 A. Yes.

10 Q. And the dollar figure for the average wages of
11 the current Dana workers at the Auburn facility includes only
12 the tier 1 workers, correct?

13 A. Excuse me?

14 Q. It only includes the tier 1 workers, correct?

15 A. Oh, I'm sorry. The -- the Dana's tier 1
16 workers. That's correct. Yes.

17 Q. And in fact, we know that one third of the
18 workers at Auburn Hills are tier 2 workers; correct?

19 A. Yes, and that's why the plant has been doing
20 well and has been able to expand employment.

21 Q. And if we -- and we know that the tier 2 workers
22 earn substantially below the average private sector wage,
23 correct?

24 A. Yes.

25 Q. And in fact, they earn on average 15 percent

1 below the private sector wage, correct?

2 A. I'm sorry, say that again?

3 Q. They earn 15 percent below the private sector
4 average.

5 A. Yes.

6 Q. So if table 4.2, instead of excluding the one
7 third of the workforce, had included all the workers, that
8 first column for Dana current wage would be substantially
9 lower, would it not?

10 A. Certainly, there's no misrepresentation here.
11 I'm presenting the analysis for tier 1 workers and then I'm
12 giving the analysis for two tier workers.

13 Q. I'm not accusing you of misrepresentation. I'm
14 just asking you a simple question. If you had included in the
15 calculation the tier 2 workers, the numbers in this first
16 column on the left would be substantially lower, would it not?

17 A. Certainly, if we had added and produced another
18 table that had both of them combined, the average Dana wage
19 would be lower for production workers.

20 Q. And did you do that calculation in preparing
21 your report or at any time subsequent to that?

22 A. My guess is that we did. It's a very simple
23 calculation.

24 Q. Well, I'm asking you, do you know if you did?

25 A. I think I did.

1 Q. And do you remember what the number was?

2 A. No.

3 Q. And you decided not to include that anywhere in
4 your report?

5 A. I think it's quite clear why I didn't, and the
6 report is clear in terms of, we were looking at the impact of
7 the wage reduction for the tier 1 workers and we wanted to
8 isolate their wage so we could do the comparability study.

9 Q. Let me refer you to page 26. And in particular,
10 table IV.5 at the top of page 26, do you see that?

11 A. Yes, I do.

12 Q. Now, this shows what, according to Dana, the
13 proposed average wages at the Auburn plant would look like
14 after implementation of the Section 1113 proposal, correct?

15 A. Yes.

16 Q. Now, would it be fair to say that this average
17 wage would be the average wage immediately following the
18 implementation of the Section 1113 proposal before there was
19 any change in the composition of the workforce?

20 A. I'm sorry, I didn't receive the question -- if
21 you could restate that? I didn't hear the question.

22 Q. Is it not true that this first column --

23 A. Yes.

24 Q. -- the proposed Dana wage, shows what the
25 average wage at the plant would look like immediately after

1 implementation of the Section 1113 proposal?

2 A. Yes.

3 Q. Okay. Now, is it not also true that, as a
4 matter of course, after implementation of the Section 1113
5 proposal, there would be some incumbent workers who would
6 retire or quit or die or leave the firm for any number of
7 reasons, correct?

8 A. That's kind of a broad statement. I mean,
9 things happen to people, if that's what your point is, and
10 life goes on. Yes, life goes on.

11 Q. Well, we know that there's a turnover on a
12 voluntary quit rate according to the most recent data from the
13 company of about 9.4 percent at the Auburn plant, so we would
14 expect over the course of a year there would be, in that
15 ballpark, 9.4 percent of people who would voluntarily quit,
16 correct?

17 A. Yeah, there certainly would be people -- if you
18 use the word "quit," it has a specific meaning. It doesn't --
19 are you talking about people who are going to go look for
20 other jobs?

21 Q. I'm talking about people who voluntarily quit.

22 A. Not retiring.

23 Q. I don't know what they do after they quit, but
24 there's going to be a certain number who voluntarily quit,
25 right?

1 A. Yes.

2 Q. And there are going to be a certain number
3 perhaps who also will retire.

4 A. Yes. Let me just comment that we do know from
5 Auburn Hills that --

6 Q. Professor Wachter, you could answer my question.
7 And there will be a certain number who perhaps will get fired?

8 A. Presumably.

9 Q. Okay. And new workers will be hired to replace
10 them; is that not true?

11 A. Yes.

12 Q. And the new workers --

13 A. Well, hopefully.

14 Q. Hopefully. And if they are, they will be hired
15 at \$11.05 an hour, correct?

16 A. That wage will grow to \$13.

17 Q. Within three years.

18 A. Yes.

19 Q. But they will be hired at 11.05.

20 A. Yes.

21 Q. As a certain number of incumbent employees
22 leave, and as new employees are hired at that \$11.05 rate, the
23 average wage at the plant will fall from the average wage
24 that's indicated here on table 4.5, correct?

25 A. Yes. And the firm may become much more

1 competitive as a result.

2 Q. I was just asking whether it would fall. And
3 your answer is yes?

4 A. Yes.

5 Q. Let me turn your attention to page 33, table
6 V.5. This is a similar table, similar analysis to the one we
7 just looked at but for the Fort Wayne plant?

8 A. Yes.

9 Q. And without going through the whole series of
10 questions again, this -- let me just see if I can summarize
11 it, this shows the proposed average wage at the plant that
12 would exist immediately after 1113 proposal were implemented,
13 correct?

14 A. Yes.

15 Q. But over time, with attrition and new hiring,
16 that number, the first column number would go down. Correct?

17 A. I'm sorry? Say again?

18 Q. I'm asking you the same questions I asked for
19 Auburn, I'm just asking for you --

20 A. The first column is the Dana proposed wage.

21 Q. Right. And that shows the average wage as it
22 would exist immediately after implementation -- let me just
23 finish for the clarity of the record -- immediately after
24 implementation of the 11 proposal, correct?

25 A. If you were including those who come in in the

1 new tier, and you added that in, that would be the case.

2 Q. If you -- if as time went on and some incumbents
3 left and some new employees were hired, that number in the
4 left column would go down, correct?

5 A. In the left column, yes.

6 Q. So for example, where it says, "Support workers
7 under your analysis would be paid ten percent below market,
8 under Dana's proposal, as time went on, the average wage of
9 the plant would become further, even more below ten percent,
10 correct? Below market.

11 A. You're obviously assuming that there would be no
12 wage increases over this period.

13 Q. I am assuming that. Let's assume that.

14 A. All right, if you assume there would be no wage
15 increases and you had new workers coming in at a lower salary,
16 then the average would go down.

17 Q. By the way, are you aware of any proposals the
18 company has to increase the pay of the workers at the Fort
19 Wayne plant?

20 A. I do not. I would assume, like any competitor,
21 that if they had trouble attracting and retaining workers,
22 they would adjust their wages accordingly. The main problem
23 that this company faces at this point is getting out of
24 bankruptcy.

25 Q. Now, a comparability study should look not just

1 at the skills of comparison workers, but also their working
2 conditions, correct?

3 A. Yes.

4 Q. To what extent in your study did you take into
5 account in determining the market wage how the working
6 conditions of Dana's workers may or may not differ from the
7 average -- the working conditions of the average worker in the
8 U.S. private sector economy in a given BLS occupational
9 category?

10 A. I took it into account because I -- not looking
11 at the average wage across the economy, I'm looking at other
12 assemblers and other lathe operators, so the working
13 conditions are, in my comparison, for the production workers,
14 are for lathe workers at Dana compared to the lathe workers at
15 other facilities by other employers. So the working
16 conditions would be roughly similar.

17 Q. You're saying that the working conditions of the
18 Dana, let's say, assemblers, are the average, they have the
19 average working conditions of assemblers in the U.S. private
20 sector, is that your testimony?

21 A. I didn't say that. I said they would be
22 similar.

23 Q. Okay. Now, under the theory of compensating
24 differentials, adverse working conditions will lead to a
25 higher market wage, correct?

1 A. Yes, but we also know what those adverse working
2 conditions are that lead to a higher wage.

3 Q. And those would include things like having to
4 wear protective equipment?

5 A. What it would -- there might be a small effect
6 to that. I don't know if there actually would be. Where it
7 really kicks in are people who are wearing gear that is from
8 the head to the foot. They are essentially in a, encased in
9 an outfit. It includes people who are exposed to extreme
10 temperature. It includes people who are working in hazardous
11 jobs.

12 Generally, the kinds of conditions you would
13 find in a Dana assembly plant or machining plant would not fit
14 into those characteristics that are -- that lead to higher
15 wages. Those are not the kind of working conditions that lead
16 to higher wages. It's also the case --

17 Q. But protective equipment, wearing protective
18 equipment or being exposed to extreme temperatures does lead
19 to a compensating differential?

20 A. Yes. But again, when I said protective
21 equipment, I'm talking about somebody who is essentially
22 encased in an outfit from head to toe.

23 Q. You didn't visit the Fort Wayne plant, did you?

24 A. I did not.

25 Q. Did you speak to any of the plant managers

1 there?

2 A. I did not.

3 Q. Did you speak to anyone at the Fort Wayne
4 facility?

5 A. No.

6 Q. Let me refer you to Professor Helper's
7 declaration and report, and in particular, page 9, paragraph
8 28.

9 THE COURT: Where is that, counselor?

10 MR. DeCHIARA: It's tab J of the looseleaf
11 binder.

12 THE COURT: What paragraph?

13 MR. DeCHIARA: Paragraph 28, page 9.

14 Q. Let me read the first couple of sentences of
15 that paragraph from Dr. Helper's report. It says, "For
16 example, at Fort Wayne, workers on the gear carrier line look
17 like they are going off to do battle. They are wearing
18 goggles, rubber aprons, shoe spats up to their knees, rubber
19 gloves, wrist and elbow braces. They are wet, sweating and
20 covered in little black beads and dust from cutting malleable
21 iron castings."

22 And I'll stop the quote there.

23 Do you have any reason to dispute the accuracy
24 of this description?

25 A. I have reason to dispute that they look like

1 they are going off to battle.

2 Q. Well, making license for that sort of language,
3 but in terms of the factual representation?

4 A. I believe that they wear that kind of protective
5 equipment.

6 Q. Let me now turn you to paragraph 30 of the same
7 declaration by Dr. Helper. And in that paragraph, Dr. Helper
8 is talking about workers in what's called the heat treat, and
9 let me just read the last sentence of that paragraph. It
10 says, "Ambient temperatures in this area are near one hundred
11 degrees in the winter and often 120 to 130 degrees in the
12 summer. The facility is not air conditioned."

13 Do you have any reason to dispute the accuracy
14 of that statement?

15 A. No, but it's also true that we know that workers
16 aren't quitting those jobs.

17 Q. Is it not true that as a matter of empirical,
18 general empirical fact that wages rise with respect to work
19 experience?

20 A. Yes.

21 Q. And is it not also true that the five plants
22 that you discuss in your report have in recent years
23 experienced substantial reductions in head count?

24 A. Yes.

25 Q. And is it not true that in a union plant like

1 these five plants that head count reductions are pursuant to
2 reverse seniority order?

3 A. Yes.

4 Q. Isn't it fair to say that the workers who remain
5 after these substantial head count reductions have a
6 relatively high degree of work experience?

7 A. Yes.

8 Q. Let me refer you now back to --

9 THE COURT: How much more do you have,
10 counselor?

11 MR. DeCHIARA: I'm more than halfway through.

12 THE COURT: Give me an estimate of time.

13 MR. DeCHIARA: Excuse me, your Honor?

14 THE COURT: Give me an estimate of time.

15 MR. DeCHIARA: I'm not sure how long I've been
16 going. I haven't been paying attention to the clock, but I'd
17 say maybe 45 minutes or 40 minutes, something --

18 THE COURT: We'll take a five-minute break.

19 (Recess taken.)

20 CROSS-EXAMINATION BY MR. DeCHIARA (Cont'd):

21 Q. Professor Wachter, let me refer you back to
22 Mr. Bueter's declaration, and in particular, page, paragraph 5
23 on page 6.

24 A. Where do you want me?

25 Q. Mr. Bueter's declaration, page 6, paragraph 5.

1 Are you there?

2 A. Yes.

3 Q. Let me read the first couple of sentences. It
4 says, "Until recently, the Debtor's businesses were operated
5 in a decentralized fashion and run on a division-by-division
6 basis. As a result, wages paid and benefits offered to
7 employees varied widely, depending on the labor in this
8 specific area where a manufacturing facility was located, in
9 order to account for variances in wage and benefit rates in
10 the various markets in which the debtors maintain their
11 manufacturing and production facilities."

12 Do you see that?

13 A. Yes.

14 Q. And there, Mr. Bueter is referring to, when he
15 says "various markets," he's talking about various labor
16 markets, correct?

17 A. Yes.

18 Q. Within the United States, correct?

19 A. Yes.

20 Q. And you believe Mr. Bueter is wrong in his
21 belief that there are various labor markets, local labor
22 markets within the United States?

23 A. Our positions are entirely consistent.

24 Q. Well, you believe there's one national market in
25 the United States, correct?

1 A. I believe one needs to look primarily at the
2 national market. If you are facing a wage deficit, and you
3 need to hire workers immediately, obviously, the local labor
4 market conditions are important. If you're taking a
5 longer-term look at survival of the company, you really have
6 to look at the national labor market 'cause that's where the
7 competitors are.

8 One thing is pricing your product so you can
9 actually sell it. And that's the product market component of
10 a labor market. The other part is the labor supply. And in
11 some cases, where they pay skilled workers perhaps less than
12 in the local market, they might hire their skilled worker who
13 does not have a union wage premium from the local market and
14 we think about and worry about the conditions and rates in the
15 local labor markets.

16 Q. You believe that there are some situations in
17 which it makes sense for an employer to look at the lower
18 labor market conditions?

19 A. Where you're paying a wage deficit and where
20 you're hiring workers, you're obviously going to hire workers
21 from the local market. Again, keep in mind that the labor
22 market has two components, the labor supply and the labor
23 demand. Labor demand is very much a national market. You're
24 hiring people when you have a wage deficit, you've got to be
25 attuned to the local labor market conditions.

1 Q. Is it your understanding in the past, when Dana
2 was taking into account variances in wages and benefit rates
3 in the various markets, it was paying a wage deficit?

4 A. It is certainly the case that, because of the
5 extraordinarily compressed wage structure that Dana has, they
6 do not pay the skilled workers a premium. The skilled workers
7 get very little out of this deal, the production workers get a
8 fair amount. The less skilled workers get the most.

9 The result of that in terms of my results is to
10 show that, for skilled workers, the firm is very close to the
11 market and, indeed, may be below in some categories.

12 Q. I don't think Mr. Bueter in those first two
13 sentences that I quoted was talking about only skilled
14 workers. He was talking about hourly workers at large, isn't
15 that your understanding as well?

16 A. I don't think you can infer anything from that
17 in terms of exactly who he was talking about.

18 Q. Well, there's clearly no indication in the
19 language there that he's referring only to skilled workers, is
20 there?

21 A. There isn't. I'm just saying in the original
22 question, that I believe the two of us are in complete
23 agreement in terms of the importance of local labor market
24 conditions in certain situations.

25 Q. Well, I don't know whether we're in agreement.

1 I just want to make sure I understand what you're saying.

2 A. I'm not saying the two of us are in agreement.
3 I'm saying I'm in agreement with Chris Bueter.

4 Q. Okay. Let's just focus on what you're saying.
5 You're saying in certain situations, it makes sense for an
6 employer to take account of conditions in the lower labor
7 market, and the situation where it makes sense, you're saying,
8 is when you're paying a wage deficit; correct?

9 A. And you need to hire workers and you obviously
10 hired workers from the local labor market.

11 Q. Okay. In the past, and I'm saying in the
12 relatively recent past, in the last few years, is it your view
13 that Dana across the board for its hourly workers has been
14 paying a wage deficit?

15 A. Certainly not.

16 Q. Certainly not. So is it in correct for the
17 company in your view to the extent it was not paying a wage
18 deficit to take into account local labor market conditions?

19 A. I believe that that statement refers to times
20 when they need to hire workers and when they would need to
21 hire workers, if they are paying a wage deficit, they would
22 need to adjust to local labor market conditions.

23 Q. And where in that language does it say that it
24 refers to when they were hiring workers?

25 A. I'm just saying that what is there is not at all

1 inconsistent with my position.

2 Q. Let me refer you again to Union Exhibit 36.
3 It's the excerpt from the Department of Labor website.

4 A. Hold it. I have to get there.

5 Q. And if you look at page 2, not the little Roman
6 ii, but the Arabic 2 --

7 A. On page?

8 Q. Two. Do you see at the bottom of the table
9 there, there in bold print on the left side it says,
10 "Geographic areas"?

11 A. Actually, I don't. I'm sorry.

12 Q. It's page 2 on Union Exhibit --

13 A. I see it. On the bottom.

14 Q. You see it?

15 A. Yes.

16 Q. And under there it lists various regions of the
17 United States of America, correct?

18 A. Yes.

19 Q. And then it has numbers, in particular the
20 fourth column, it has hourly wages in private industry for
21 those various regions, correct?

22 A. Yes.

23 Q. And those numbers differ, one from the other?

24 A. Yes.

25 Q. Now, one could do a comparability study that,

1 instead of looking at the average wages across the U.S.
2 private sector economy, one looked at local labor markets.
3 Correct?

4 A. You could, but it would be a very bad idea.

5 Q. Okay. Let's look at your expert report in the
6 Tower case, which is Union Exhibit 31.

7 THE COURT: I'm holding you to your time
8 estimate, counselor.

9 MR. DeCHIARA: Your Honor, I'm not sure I'm
10 going to complete it within the 45 minutes.

11 THE COURT: Be more direct with your questioning
12 and get right to the point.

13 MR. DeCHIARA: Your Honor, there's a lot of
14 material to cover. I'm doing my best.

15 THE COURT: Be more focused. There's been a lot
16 of redundancy and I haven't called you down on it. It's only
17 now. Be more focused.

18 MR. DeCHIARA: Your Honor, I will do my best
19 to --

20 THE COURT: I can't ask for more. Go ahead.

21 MR. DeCHIARA: Thank you.

22 Q. You prepared a report in the Tower case on
23 behalf of the company in support of its 1113 motion, did you
24 not?

25 A. I did.

1 Q. And you did a comparability study?

2 A. I did.

3 Q. And in part, in your comparability study, you
4 looked at local labor markets?

5 A. The point of our comparability --

6 Q. Just answer, it's a yes or no question. We're
7 trying not to take up more of the court's time --

8 A. I think this answer will answer a whole series
9 of questions.

10 Q. It will help move it along if you answer yes or
11 no, if that's possible. Did you do a comparability study that
12 included in part limiting your look at local labor markets?

13 A. No.

14 Q. Okay.

15 A. If you let me explain, I think --

16 Q. No, I think it's just going to take too much
17 time if you start explaining, so if you can answer yes or no,
18 I would appreciate if you could limit your answer to that.

19 MR. BENNETT: I object. Does counsel actually
20 not want the expert to explain what's necessary for the court
21 to understand in this line of questioning?

22 MR. DeCHIARA: Counsel wants the witness to
23 answer the questions, and he answered the questions.

24 THE COURT: Go ahead.

25 Q. If you can turn to page 14 of Union Exhibit

1 31 --

2 A. I'm sorry, yes.

3 Q. -- there's an Exhibit 3.3, do you see that at
4 the bottom of page 14 in your Tower report?

5 A. Yes.

6 Q. And it says, "Average wages," I'm reading the
7 title of the chart, it says, "Average wages of Tower's hourly
8 workers at twelve unionized plants and comparable occupations
9 in their local labor markets as measured by Department of
10 Labor data, October 2005."

11 Is it not true that in this part of your report,
12 in Tower, that you took into account local labor market
13 conditions?

14 A. What I was doing in taking account of local
15 labor market conditions was criticizing Tower's approach,
16 which used local labor market conditions. And the point of my
17 report was to say that their comparability study had looked at
18 local labor market conditions and I was making a national
19 comparison and criticizing their study for the use of, or
20 relying on, exclusively, local labor market data.

21 Q. Looking at local labor market data has the
22 advantage of accounting for any conditions of labor demand or
23 supply that are specific to that location, correct?

24 A. Labor supply. Labor demand is another factor.

25 Q. If you could turn to paragraph 19 of your

1 report --

2 A. This is not Tower, or --

3 Q. Tower, I'm sorry, your Tower report. Page 8,
4 paragraph 19. The third sentence, feel free to read as much
5 of the paragraph as you like, being mindful of the time. I'm
6 going to refer you to the third sentence. Tell me when you've
7 read it.

8 (Witness perusing document.)

9 Q. It says, "Such a control group has the
10 advantage --" well, let me start from the beginning. The
11 beginning of paragraph 19, it says, "The Tower wage analysis
12 examines wages in the same occupation or type of job, i.e.,
13 similar skills and working conditions, in the same or nearby
14 location. This approach has several advantages. Such a
15 control group has the advantage of accounting for any
16 conditions of labor demand or supply that are specific to that
17 location."

18 Did you write those words?

19 A. Yes.

20 Q. Do you stand by them?

21 A. Certainly, but you're taking it out of context
22 in my overall report. The whole report was an analysis of
23 Tower's own study. Tower's study relied exclusively on local
24 labor market conditions. My study relied on national labor
25 market conditions, is entirely consistent with what I'm doing

1 here. Simply evaluating the company's study that had relied
2 on local labor market conditions, and I was pointing out some
3 of the advantages as well as the disadvantages that come up
4 with later paragraphs of their approach.

5 Q. What are the other advantages of taking into
6 account local labor supply and demand?

7 A. I think I've explained them all as best I can.

8 Q. Well, if you could briefly summarize that,
9 because I'm not sure you did.

10 A. Well, as I said before, if you have --

11 Q. No, in terms of doing a comparability study.
12 What are the advantages of taking into account local issues?

13 A. An overall comparability study, I wouldn't look
14 at local labor market conditions.

15 Q. When you say -- who prepared -- going back to
16 that Exhibit 3.3 on page 14, who prepared that?

17 (Witness perusing document.)

18 Q. That's part of your report, is it not?

19 A. It is, but it's all Tower's data.

20 Q. Okay. But you incorporate Tower's data and you
21 presented this table, correct?

22 A. To criticize it.

23 Q. You presented this table, correct, in your
24 report?

25 A. Yes.

1 Q. And this was part of your report submitted to
2 the court in the Tower case.

3 A. Certainly.

4 Q. And in fact, when you did look at local labor
5 market conditions, you found that the market wage was higher
6 than when you looked at a national wage, correct?

7 A. I did not look at the local labor market
8 conditions. They did the local labor market study. I was
9 critiquing their study. I did not look at local labor market
10 conditions. I was reporting on their conclusions.

11 Q. Ultimately, the document will speak for itself.
12 I don't have the time to take you through it sentence by
13 sentence. But let me refer you to paragraph 37. It's on the
14 next page. It's page 15. It says, "Comparison of exhibits
15 3.2 and 3.3 thus isolates the effect of the use of local
16 rather than national wages. Use of local market comparison
17 data leads to a market wage estimate of 14.23 versus an
18 estimate of 13.25 based on national wage data. This
19 difference reflects the fact that the twelve Tower plants tend
20 to be located in areas that have average wages for the ten
21 benchmark occupations that are higher than the national
22 average compiled across all labor markets."

23 Did you write those words?

24 A. Could you read the last sentence of that
25 paragraph? Because that will point out what I was doing.

1 Q. Well, and they are there in front of you, the
2 words I just read. Did you write them? That's my question --

3 A. The sentence that follows, "The movement from
4 the use of local to the use of national OES wage increases our
5 estimated Tower wage premium from 24 to 33 percent." As I've
6 said now a number of times, what I was trying -- what I was
7 doing in their study, what I was doing in this report --

8 MR. DeCHIARA: Your Honor, this is why --

9 THE COURT: No, counselor, as a matter of fact,
10 I was go to comment but the witness did. You didn't read the
11 very last sentence.

12 MR. DeCHIARA: Your Honor, I can't read the
13 entire report.

14 THE COURT: It was only one sentence. Just a
15 few words, counselor, you stopped a little bit too short.
16 It's only ten words.

17 Q. Professor Wachter, if I refer you to any part of
18 any text in --

19 THE COURT: Please let the witness finish the
20 answer. I'm allowing him to finish.

21 A. Tower did a study before we were -- before I was
22 employed and what they asked me to do was to do an analysis of
23 the Tower study.

24 One of my major conclusions was that they had
25 understated the premium they were paying because they relied

1 on local labor market conditions. And the correct approach
2 was to use a national labor market analysis.

3 So if you read the entire document, it does
4 stand for itself, and what it says is, you should do a
5 national labor market analysis.

6 Q. Tower is an auto parts manufacturer, correct?

7 A. Yes.

8 Q. And of course, like Dana, it was in Chapter 11
9 bankruptcy, correct?

10 A. Yes.

11 Q. And you found that the wage proposals that Tower
12 made in its 1113 proposal were highly reasonable, correct?

13 A. I'm sorry, say that again?

14 Q. You found Tower's Section 1113 proposals to be
15 highly reasonable, correct?

16 A. You'd have to point me to -- I don't recall
17 exactly --

18 Q. Okay. I'm going to point you to one sentence
19 but feel free to read any sentence and all sentences in the
20 document because I don't want to restrict you, but let me
21 point you to the following sentence.

22 It's paragraph ten on page 4, the first
23 sentence. It says, "Based on our review of the Tower
24 analysis, combined with our analysis, we conclude that the
25 current pay proposals from Tower are highly reasonable."

1 Does that refresh your recollection about
2 whether you concluded that Tower's pay proposals were highly
3 reasonable?

4 A. Yes.

5 Q. And you did so conclude, did you not?

6 A. I did so conclude.

7 Q. And you did a comparability study in this
8 report, did you not?

9 A. Yes.

10 Q. Could you turn to page 21 of this report. And
11 in particular, Exhibit 4.2. Do you see that?

12 A. Yes.

13 Q. And in that exhibit, you conclude that the Tower
14 market wage differentials after implementation of the proposed
15 wage changes at the plants at issue in that case, all
16 employees at issue would enjoy a pay premium, according to
17 you, of 7 to 19 percent; correct?

18 A. Yes. And the reason --

19 Q. And in fact, for non-skilled employees, and by
20 that I assume you mean what would be the production or support
21 workers here, is that a correct assumption? When you use
22 "non-skilled," in Tower 4.2, does that equate to what would be
23 called the production and support workers here?

24 A. Some of the support workers, yes.

25 Q. And you concluded, for the non-skilled

1 employees, that they would enjoy a 22 percent to 33 percent
2 wage premium, correct?

3 A. Yes.

4 Q. Now, let's look at what you say would be the
5 resulting market wages of the Dana employees in this case
6 after -- well, strike that --

7 A. If I could give you a short explanatory sentence
8 on why I concluded the way I did --

9 Q. You have the whole report that supports it. I'd
10 like to try to get within my time. So if you could just
11 answer my questions.

12 THE COURT: Maybe we can save a little time if
13 we get a short explanation.

14 MR. DeCHIARA: As you wish, your Honor.

15 A. My short explanation is, all that I was
16 concluding in this report is that the wage proposals were
17 moving Tower in the right direction. It's not in my capacity
18 to instruct firms to hit exact comparability. I was simply
19 applauding the fact that they were narrowing the differential.

20 Q. But nonetheless, in your expert opinion, you
21 concluded that wages that remained after 1113 and limitation,
22 22 to 33 percent above market, were highly reasonable,
23 correct?

24 A. As a first step, I assumed that they would be
25 lowered later.

1 Q. Was there any representation to you to that
2 effect?

3 A. If Tower does not get its --

4 Q. Please answer the question. Was there a
5 representation to you by Tower management that, after
6 implementing the 1113 proposal, they were going to reduce
7 wages even further? That's a factual question. You can
8 answer it yes or no.

9 A. No, I can't answer it yes or no. The answer is
10 that they -- their proposals were contingent on what happened
11 to the success of the firm and their ability to get out of
12 bankruptcy and survive. It was clear that they intended to
13 make further adjustments if they needed to.

14 Q. When you say it was clear, did they tell you
15 they were going to do that?

16 A. I had discussions with them and there were
17 discussions that they had to get themselves out of bankruptcy.
18 They had to meet national labor market conditions, and might
19 make other adjustments to do so.

20 Q. In addition to their 1113 proposals?

21 A. As I said, this was a general discussion of,
22 that if this did not prove to be enough, they would do more.

23 Q. Do you say that in your report?

24 A. I didn't say it in my report.

25 Q. Did you testify in Tower?

1 A. Yes, I did.

2 Q. Did you testify to what you just testified to
3 just now?

4 A. That question didn't come up to I didn't testify
5 to it.

6 Q. Well, you have a basic understanding of Section
7 1113, do you not?

8 A. Yes.

9 Q. And that an employer has to prove that --

10 A. Actually, perhaps I should go back. My
11 understanding --

12 Q. I'm asking another question, excuse me -- excuse
13 me, let me finish my question. The employer has to prove that
14 the proposals it seeks are necessary to enable it to achieve
15 long-term viability; are you familiar with that?

16 A. That is --

17 Q. Are you familiar with that?

18 A. Can I utter a few words?

19 THE COURT: You should just answer yes or no to
20 that.

21 A. I'm familiar with that component. Not much
22 more.

23 Q. Okay. So Tower believed that it could
24 successfully, achieve successful long-term viability and still
25 pay market wages to this group of employees that were, under

1 your view, 22 to 33 percent above market average, is that
2 correct?

3 A. In the context of the proceeding, what Tower was
4 obviously trying to do was reach an accommodation with the
5 labor union so the court would not have to impose a
6 settlement, and that often requires the firm to settle on
7 wages that are above market levels.

8 Q. Well, certainly, employers typically try to
9 reach settlements with their unions and not go to a decision.
10 But nonetheless, Tower put on a case in a court of law, and
11 you supported that case, that the Section 1113 proposals were
12 what was necessary for its long-term viability, correct?

13 A. All I did was conclude that they were lowering
14 the differentials, and that was the right thing to do.

15 Q. Let's move on. Let's look at what Dana's
16 proposals would achieve here compared to what Tower would
17 achieve there. If you could turn to page 33 of your Dana
18 expert report, it's table 5.5.

19 A. You're back to my report?

20 Q. Yes. Are you there?

21 A. Yes.

22 Q. And Tower's proposals would put the skilled
23 trades workers at Fort Wayne 11 percent below market?

24 A. Yes.

25 Q. And it would put support workers ten percent

1 below market?

2 A. Yes.

3 Q. Turn to page 47, if you would. Table 7.5, do
4 you see that?

5 A. Yes.

6 Q. Dana's proposal would put the skilled trade
7 workers at Marion at six percent below market?

8 A. Yes.

9 Q. And it would put the production workers at seven
10 percent below market?

11 A. Yes.

12 Q. That relates to Pottstown, so I won't ask you
13 about Pottstown because it's not part of the Section 1113.
14 Under the principle of comparability, workers with comparable
15 skills and comparable working conditions should receive
16 comparable compensation, correct?

17 A. Yes.

18 Q. So under your analysis, let's look back at page
19 33. Are you at page 33?

20 A. Yes.

21 Q. Let's just talk about all the support workers in
22 general.

23 Workers in your view who have similar skills and
24 similar working conditions earn 13.62 an hour, correct?

25 A. Yes.

1 Q. So the workers at that plant should receive
2 13.62 an hour, correct?

3 A. If there were going to be, you know,
4 comparability.

5 Q. But Dana is proposing to pay them less, correct?
6 I didn't hear what you said.

7 A. I haven't said. We were talking about the
8 support workers. Yes, they would be paying them less.

9 Q. Now, you say in your report that the principle
10 of comparability is supported by a "norm of basic fairness."

11 What's a norm of basic fairness?

12 A. As I say in the next sentence, the norm of basic
13 fairness is that workers who were doing similar work should
14 receive similar wages. If I could also point out that --

15 Q. Please, I would just -- answer my questions,
16 we'll get through this quicker. Now, you say in your report
17 that market wages are those "required to attract and retain
18 well qualified employees," correct?

19 A. Where are you reading from?

20 Q. Paragraph 39 of your report. And feel free to
21 read any part of your report and any part of paragraph 39, but
22 in particular I'm focusing on the middle paragraph.

23 A. Paragraph 39.

24 Q. That's correct. You say there, "From the
25 perspective of employers, comparability has the feature of

1 requiring that compensation be set at the level required to
2 attract and retain well qualified employees."

3 Did you say that?

4 A. Yes.

5 Q. If an employer pays below market level, it would
6 not be able to, or would at least have a hard time attracting
7 and retaining well qualified employees, correct?

8 A. That's a very incomplete statement and it's
9 wrong because of its incompleteness.

10 What I did as you know is a quit rate analysis,
11 which is critical. If a firm, the way a firm knows it's
12 paying below market is if it has trouble attracting and
13 retaining workers. That shows up in the quit rate. So the
14 firm doesn't have to pay exactly the wages I'm suggesting.
15 What it has to do is look at the quit rate, which will provide
16 confirmation.

17 In addition, what I did not analyze in the Tower
18 report was their benefits, which were much above market. My
19 analysis in Tower was entirely about their wages.

20 Q. To attract and retain well qualified workers, a
21 firm needs to both pay competitive wages and competitive wages
22 plus benefits, in other words, total compensation, correct?

23 A. Yes.

24 Q. Okay. You say in the last sentence of paragraph
25 39, "A firm that provides a competitive wage and benefits

1 package is by definition not at a competitive disadvantage."

2 Do you see that?

3 A. By definition.

4 Q. Okay. Is it by definition true that a firm that
5 pays a below-market wage and benefits package, is at a
6 competitive advantage?

7 A. I'm sorry, say that again?

8 Q. Is it true, and I'm just trying to follow
9 logically from what you wrote, is it true by definition that a
10 firm that pays below a competitive wage and benefit package
11 enjoys a competitive advantage?

12 A. No, it doesn't. Because it will have trouble
13 attracting and retaining a qualified workforce.

14 Q. Okay. So if you pay below-market wages and
15 benefits, you'll have trouble attracting well qualified
16 workers, correct?

17 A. Yes. That's what I just said.

18 Q. Okay. So far, we've been talking only about
19 wages. Let's now talk about total compensation, if you can
20 turn to page 7 of your report, paragraph 21.

21 A. Just a small comment if I can say, we've been
22 talking a lot about total compensation.

23 Q. You're right. I strike my -- I'm just trying to
24 segue into the next subject. You say in paragraph 21, and I'm
25 going to point you to certain language, but feel free to read

1 any part of paragraph 21 or indeed your whole report.

2 You say in paragraph 21, in the second sentence,
3 "We calculate a plant-wide compensation premium reflecting the
4 fact that non-wage benefits data are only available at the
5 plant level"; do you see that?

6 A. Yes.

7 Q. So I just want to understand, when you have
8 charts in your report, and I'll give you an example, the chart
9 on page 23, regarding total compensation at the Auburn Hills
10 plant, the figure you give there for total current
11 compensation for the plant, is that all --

12 A. I'm sorry, which table are you referring to?

13 Q. Page 23.

14 THE COURT: Table 4.3.

15 A. Yes.

16 Q. Is that for all the workers in the plant? Any
17 of the numbers in the first column where it says Dana, are
18 those for all the workers in the plant?

19 A. Can I read these?

20 Q. Yes, please. Feel free to read whatever you
21 like.

22 (A pause in the proceedings.)

23 A. Yes.

24 Q. So it includes supervisors?

25 A. Yes, it is a plant-wide compensation -- it is a

1 plant-wide benefit level.

2 Q. So it would include supervisors?

3 A. Yes.

4 Q. Plant manager?

5 A. I believe so, sure.

6 Q. Clerical workers?

7 A. I believe so.

8 THE COURT: He said it encompasses all of them.
9 Get on.

10 Q. And would that, that would be true not only in
11 your charts where you set forth what the current total
12 compensation is, but also in your charts where you say what
13 the total compensation will be after implementation of the
14 proposed changes.

15 A. Yes.

16 Q. Such as Debtor's Exhibit 55, correct?

17 A. Yes. And I have no reason to suppose the
18 inclusion of these extra workers changes the premium
19 particularly in one direction or another.

20 Q. Did you make any effort to determine whether
21 that was true?

22 A. I couldn't, 'cause I don't have statewide data,
23 but we do know that with issues like medical insurance, that
24 they are pretty much the same regardless of the worker
25 category, and therefore, benefit rates actually tend to be

1 higher for lower-skilled workers than for higher-skilled
2 workers with respect to that important component.

3 Q. But the wages of, say, the plant manager, are
4 above those of the assembly line workers correct?

5 A. Plant manager does get paid more than assembly
6 line workers.

7 Q. And in determining the comparable private sector
8 number in your total compensation charts, both the ones that
9 show current total compensation and those that show, well, I
10 guess the numbers are the same, right? The comparable column
11 is the same, both, for example, in table 4.3, which shows
12 current benefits, and Debtor's Exhibit 55, which behind tab C.

13 That was confusing. Let me try to clarify it.

14 A. It surely was.

15 Q. You have, in your original report, you have
16 charts that show current total compensation at the five
17 plants.

18 A. Yes.

19 Q. And then you have another column right next to
20 it that shows what in your view is the market total
21 compensation.

22 A. Yes.

23 Q. And then in your new Exhibit 55, you look at
24 what the total compensation at the plants will be after
25 implementation of the Section 1113 proposal.

1 A. When you say Exhibit 55 --

2 Q. It's Debtor's Exhibit 55, behind tab C of the
3 looseleaf binder that was handed out by counsel during your
4 direct testimony.

5 A. Yes.

6 Q. And the numbers in the comparable private sector
7 column, the second column, is identical throughout. That
8 doesn't change, correct?

9 A. It changes by plant, because it's a different
10 skill mix.

11 Q. But it doesn't change from the charts that show
12 the current Dana compensation to Debtor's Exhibit 55; correct?

13 A. Yes.

14 Q. And in coming up with that comparable number,
15 the comparable private sector numbers, did you look at -- did
16 you do what you did with wages and try to match specific
17 occupational categories at Dana to specific BLS occupational
18 categories?

19 A. You're talking about benefits?

20 Q. Yes.

21 A. The benefits match is done with blue collar
22 workers, which is as close as you can come with the ECEC data.

23 Q. And when you say blue collar workers, that's not
24 a BLS term. What's -- correct?

25 A. Well, it would include the workers that are

1 encompassed in this report.

2 Q. Right, but what's the BLS category that you
3 looked at to obtain the comparable total compensation number?

4 A. The benefits number is for blue collar workers
5 out of the ECEC report.

6 Q. There's not a line in the ECEC that says "blue
7 collar workers," is there?

8 A. I'm not sure if it says blue collar workers, but
9 it may. It may say production workers. I'm not sure exactly
10 what they have as the title.

11 Q. And did you look at any particular industry to
12 get that comparable, such as the auto parts industry?

13 A. I would not do so based on my methodology.

14 Q. I'm not asking for the editorial comment. I
15 just want to know factually, did you do that?

16 A. I answered that question.

17 Q. No, you did not?

18 A. I did not.

19 Q. So it's your understanding that there's a
20 category in BLS that says "blue collar workers" and that's the
21 wage you took?

22 A. Yes. That's the benefits --

23 Q. Benefits?

24 A. Yes.

25 Q. Thank you. And how did you break down the

1 comparable number by plants? How did you end up with
2 different numbers for the different plants?

3 A. That is much too vague to answer. I have no
4 idea what you're asking.

5 Q. Okay. Look at Debtor's Exhibit 55. Do you see
6 the column that says, "Comparable private sector workers?"

7 A. Yes.

8 Q. And the numbers differ for the five different
9 plants, correct?

10 A. Yes.

11 Q. Why do they differ?

12 A. Because the skill mix in each of the plants is
13 different.

14 Q. But these numbers come from the BLS, correct?

15 A. Yes.

16 Q. So what did you look at that was different in
17 the BLS data that produced different numbers for these plants?

18 A. As I've explained a number of times, the skill
19 mix differs from plant to plant. What we did in the
20 comparison was compare each of the groups to their individual
21 groups in the private sector. If a plant had more skilled
22 workers than another plant, the skilled worker category would
23 get a higher rating and therefore, its comparable wage would
24 be higher, reflecting the skill mix.

25 Q. But to reflect the skill mix, you need to look

1 at particular occupational categories, right?

2 A. That's the way I did the report. I gave the
3 categories and matched it to private sector -- matched it to
4 private sector comparators and then we added it up.

5 Q. Okay. I asked you earlier --

6 THE COURT: Counselor --

7 Q. Maybe I'm misunderstanding --

8 THE COURT: -- counselor, your time is just
9 about up. We'll quit for the evening and you'll get a short
10 period of time in the morning to continue, but a short period
11 of time.

12 MR. DeCHIARA: Thank you, your Honor.

13 THE COURT: Because I think you're kind of --

14 MR. DeCHIARA: I'm pretty much in the end,
15 towards the end.

16 (Continued on following page.)

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1 THE COURT: Well --

2 MR. BENNETT: If he's able to finish --

3 MR. DeCHIARA: I'm not suggesting I'll finish
4 today. I'll be happy to break for the evening --

5 THE COURT: Can you do this in another 15
6 minutes? We'll accommodate you.

7 MR. DeCHIARA: I can't represent that to the
8 court, your Honor.

9 THE COURT: Well you can't expect much more time
10 tomorrow. Very well. Tomorrow, 10 o'clock.

11 (Time noted: 7:25 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.

COUNTY OF NEW YORK)

I, DAVID LEVY, CSR, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify
that the foregoing proceedings were taken
before me on March 27, 2007;

That the within transcript is a true
record of said proceedings;

That I am not connected by blood or
marriage with any of the parties herein nor
interested directly or indirectly in the matter in
controversy, nor am I in the employ of any of the
counsel.

IN WITNESS WHEREOF, I have hereunto
set my hand this 29th of March, 2007.

DAVID LEVY, CSR

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EXHIBIT G

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
-----x
In the Matter of
DANA CORPORATION, 06-10354
Debtor.
-----x
United States Bankruptcy Court
One Bowling Green
New York, New York
March 28, 2007
10:10 a.m.
B E F O R E:
HON. BURTON R. LIFLAND,
United States Bankruptcy Judge

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P R O C E E D I N G S

THE COURT: Be seated, please.

MR. DeCHIARA: Good morning, your Honor. I'd like to complete the cross-examination of Dr. Wachter.

MR. TAMBE: There's one other matter, your Honor, that's on the calendar. It should take roughly five minutes. Mr. Jimenez will present it.

MR. JIMIENEZ: Good morning, your Honor, Pedro Jimenez of Jones Day on behalf of the debtors. Your Honor, on March 14th, the debtors filed a motion to assume a lease related to a Rochester Hills facility. We served the a copy of the motion on the same day, on March 14, and to date have not received any objections. I conferred with counsel for the creditors committee prior to the hearing and was advised that the creditors committee had no objection, and actually supported the motion. I've brought a copy of the order with me. I'm also prepared to give the court an explanation and a summary of the new lease terms if your Honor wishes.

THE COURT: Go ahead, very brief.

MR. JIMIENEZ: Your Honor, currently, the lease has a life of approximately 14-and-a-half years and the debtors are paying approximately \$121,046 per month on the lease. Pursuant to the amendment that was entered into with the lessor, the rent has been reduced by approximately 45 percent to \$67,183.33, and the term has been reduced from 15

1 years to three years and the amount of the claim that the
2 lessor would get has been reduced from approximately \$4.5
3 million to \$2.75 million. And finally, the debtor would pay a
4 cure payment of approximately \$59,569.40 based on the amended
5 terms of the lease. The debtors concluded in their business
6 judgement that the amended lease was beneficial to the estate
7 and made the decision to assume the lease.

8 THE COURT: Does anyone want to be heard?
9 There's no response. Your application is granted. I'll
10 entertain the order.

11 MR. JIMIENEZ: Your Honor, I've got a copy of
12 the order both on paper and disc, if I could approach.

13 THE COURT: Yes. I have approved the order.

14 MR. JIMIENEZ: Thank you, your Honor.

15 MR. DeCHIARA: Your Honor, if we could call
16 Dr. Wachter back to the stand to complete his
17 cross-examination?

18 THE COURT: Doctor?

19 M I C H A E L W A C H T E R , having been previously
20 sworn, resumed the stand and testified further as
21 follows:

22 MR. DeCHIARA: For the record, I'm Pete DeChiara
23 from the law firm of Cohen, Weiss & Simon for the UAW and USW.

24 CROSS-EXAMINATION BY MR. DeCHIARA (Cont'd):

25 Q. Good morning, Dr. Wachter.

1 A. Good morning.

2 Q. Do you know the quit rates of Dana's competitors
3 in the auto parts industry?

4 A. No, I do not.

5 Q. And the quit rate data that you provided in
6 Debtor's Exhibit 56, which appears behind tab D of the
7 looseleaf binder, the -- are you there?

8 A. Debtor Exhibit?

9 Q. It's 56, behind tab D.

10 A. Yes.

11 Q. You have data on the private sector quit rate
12 and the manufacturing industry quit rate. Do you see that?

13 A. Yes, I do.

14 Q. Neither of those sets of data are limited to
15 firms that have over one thousand employees; is that correct?

16 A. Yes.

17 Q. That is correct?

18 A. Yes.

19 Q. You testified about obtaining certain
20 information about the incumbent tier 2 employees at Auburn
21 Hills, do you recall that testimony?

22 A. Yes, I do.

23 Q. And do you have specific data on what the quit
24 rate is among the incumbent tier 2 workers at Auburn hills?

25 A. The encumbered --

1 Q. Incumbent tier 2 workers at Auburn Hills. Do
2 you have specific data?

3 A. No, I do not.

4 Q. But you were told by the plant manager certain
5 things about that --

6 A. That they were, when they originally posted the
7 openings, they had a flood of applicants. They were able to
8 choose freely among them, and they -- they have been able to
9 retain the ones they hired, they wanted to keep, and those
10 workers are as good as the incumbent workers.

11 Q. Do you have any data on how many of those have
12 quit over any period of time? Do you have any data?

13 A. I do not believe I do.

14 Q. By the way, was that the same Auburn Hills
15 management that made that enormous error initially that you
16 needed to correct, as, in your -- in Exhibit 56?

17 A. It certainly wouldn't be the same person.

18 Q. But it was the Auburn Hills management that made
19 that error?

20 A. I would believe that the error was made
21 clerically by somebody in an office collecting data. It was
22 certainly not the plant manager's error.

23 Q. Is that speculation on your part or do you have
24 firsthand knowledge as to that?

25 A. I guess it's speculation based on --

1 Q. Okay.

2 A. -- what a plant manager normally does and what
3 clerical support normally do.

4 Q. The cost of Dana providing life and health
5 insurance to its current retirees is a fixed, not a marginal
6 cost, correct?

7 A. I'm sorry, say that again?

8 Q. The cost of Dana providing life and health
9 insurance to its current retirees is a fixed, and not a
10 marginal cost, correct?

11 A. You stated it differently the second time than
12 the first time.

13 Q. Well, why don't you answer the second time I
14 stated it.

15 A. There's a technical question. Let me give you a
16 full answer to it, if I can.

17 "Fixed" and "variable" are economic terms,
18 meaning does it vary with output. It is certainly the case
19 that retiree costs do not vary with output. However, they are
20 continuing costs of the firm. And they are not paid once and
21 then not paid again. There are continuing annual obligations
22 resulting from the collective bargaining agreement and
23 therefore, properly viewed as labor costs.

24 Q. But they are a fixed cost.

25 A. They do not vary with output. They have to be

1 paid each year.

2 Q. In determining its labor costs, for purposes of
3 bidding for new business, it's correct, is it not, that Dana
4 should not include those costs of providing retiree health and
5 life insurance to its current retirees?

6 A. Not on bidding, but it would certainly show up
7 in the P&L.

8 Q. The questions was -- excuse me, let's just get
9 the record clear. The answer to my question was yes, I am
10 correct?

11 A. You asked a theoretical question and I answered.
12 I do not know how they do the bidding.

13 Q. No, it's not a theoretical question. Would it
14 be proper, forgetting about how they actually do or don't do,
15 my question is, and let me just to make the record clear, it
16 would be proper, would it not, in determining its labor costs
17 for purposes of bidding for new business, for Dana not to
18 include the costs of providing retiree and health insurance to
19 its current retirees?

20 A. That would be entirely a management decision.

21 Q. Professor Wachter, did you testify in the Delphi
22 case?

23 A. Yes.

24 Q. I'd like to show you a document that the been
25 marked as Union Exhibit 34. Which I will represent to you is

1 a copy of the transcript from May 10th, 1996 in the Delphi
2 Section 1113 hearing. And I would ask to you turn to page
3 170. And I'm going to refer you to a certain sentence, but
4 feel free to look at the entire document in answering my
5 question.

6 It's the -- are you on page 170?

7 A. Yes.

8 Q. It's the third answer, the third text after the
9 third letter A. It says there, "There was a -- in bidding for
10 new business, you would not include legacy costs because they
11 are fixed costs and not marginal costs."

12 Was that your testimony?

13 A. That was, and that was the way I tried to answer
14 your question until you restated it in a way that forced me to
15 give a different answer.

16 Q. Okay. But you would stand by the testimony I
17 just read from the Delphi case?

18 A. If you're doing marginal cost bidding, which was
19 the setting in which I was answering the question, if you're
20 going marginal cost bidding, you would not -- it's clearly a
21 management decision as to whether or not they want to do
22 marginal cost bidding.

23 Q. When the Bureau of Labor Statistics provides
24 data on employee costs, it does not include the costs that
25 firms pay retiree life insurance to its -- to their retirees,

1 correct?

2 A. It's correct, and it's my understanding the
3 reason for that is that it's so unusual in the private sector.

4 Q. In Delphi, in preparing your comparability study
5 in Delphi, you looked at data on the total compensation of
6 Delphi's competitors in the auto parts industry, correct?

7 A. Yes.

8 Q. Now, you did not only look at data concerning
9 compensation paid by financially successful competitors,
10 correct? You did not limit it to that subset.

11 A. I included all the data that was given to me.

12 Q. And as far as you know, that data was not
13 limited to financially successful competitors; is that
14 correct?

15 A. Certainly not. Much of the data was collected
16 by GM and would be the data provided by companies that had
17 succeeded in winning GM's business away from Delphi.

18 Q. And that was one of three sets of competitor
19 data that you relied on?

20 A. Yes, that's correct.

21 Q. And overall, that data as far as you know is not
22 limited to only the financially successful firms, correct?

23 A. Correct.

24 MR. DeCHIARA: I have no more questions. I
25 would like to move into evidence Union Exhibit 36, which is

1 the excerpt from the Bureau of Labor Statistics document that
2 I questioned the witness about yesterday.

3 MR. BENNETT: Is there a complete version of
4 this?

5 MR. DeCHIARA: It is, it's actually Company
6 Exhibit 185.

7 MR. BENNETT: Does that go in at the same time?

8 MR. DeCHIARA: I happily stipulate to that.

9 MR. BENNETT: No objection, your Honor.

10 THE COURT: Received.

11 (Union Exhibit 36, received in evidence, as of
12 this date.)

13 REDIRECT EXAMINATION BY MR. BENNETT:

14 Q. Professor Wachter, I think you had been asked
15 yesterday about benefits data at the plants and the question
16 had to do with whether the benefits data at the plants
17 included benefits applicable to non-hourly employees such as
18 plant managers, et cetera.

19 Are you sure the data that you included had such
20 non-hourly employees in there?

21 A. It was pretty clear to me after I said it that
22 it was wrong because that data only did include the unionized
23 work force.

24 MR. BENNETT: Nothing further, your Honor.

25 MR. DeCHIARA: Nothing further, your Honor.

1 THE COURT: Thank you, sir.

2 (The witness is excused.)

3 MR. TAMBE: Your Honor, subject to the recall of
4 witnesses, rebuttal witnesses on the presentation of the
5 union's case, debtors have no further witnesses on the
6 1113/1114 hearing.

7 MR. SIMON: Your Honor, the Steelworkers and
8 Auto Workers Union move for a dismissal pursuant to Rule
9 56(d). Even in this court, chosen by this debtor through a
10 paper corporation for jurisdictional purposes because of its
11 decisional track with regard to Section 1113, I say even in
12 this court, to argue that it is necessary to impose \$20
13 million worth of labor cuts in an eight-billion-dollar
14 company, one quarter of one percent in effect of the costs of
15 the company, is absurd and cannot possibly meet any reading,
16 however expansive, of the word "necessary."

17 Even in this court, the argument that the
18 relevant labor market is not employees in the industry in
19 which the applicant is a participant, is not something that
20 this court has looked to in the past. This court has been
21 solicitous of competitors in the industry, and the ability of
22 the debtor to compete with competitors in the industry and in
23 the relevant market with respect to labor. I am aware of no
24 case in which a court has, even this court, has issued an
25 order of rejection based upon an academic notion of a national

1 labor market in the total American economy as opposed to
2 focusing on the competitive set of competitors in the same
3 industry and typically, in the local labor market.

4 Even in this case, even in this court, the
5 argument that the total elimination of retiree health benefits
6 is necessary for reorganization is something I am aware of no
7 court granting. Modification, yes. That's been proposed.
8 Reduction, yes, if that's been proposed. Total elimination?
9 Nay.

10 In addition to the "necessary" argument, in
11 terms of "fair and equitable," we have a settlement with the
12 retiree committee with a payment of \$78 million against a
13 liability perhaps of \$400 million of OPEB, where you have a
14 billion dollars of OPEB liability here, with no liability
15 whatsoever made with respect to the amelioration of that
16 extent of the claim.

17 Even in this court, the notion of "fair and
18 equitable" should have some bearing upon the manner in which
19 1114 is applied to those circumstances, particularly where, as
20 your Honor is aware, the case for the non-union retirees with
21 respect to retiree medical was a far lesser, far less
22 well-based-in-law argument than with respect to union
23 retirees. And this court indicated at the conclusion of the
24 presentation of the settlement the other day that this court
25 had been prepared to issue that order, and debtors' papers are

1 replete with statements of the level of their confidence in
2 their ability to terminate such benefits for non-union
3 employees without the necessity for an 1114 order. So on a
4 "fair and equitable basis, as well as a "necessary" basis,
5 there is no basis for issuance of the 1113 or the 1114 relief
6 sought.

7 Further, as we indicated earlier, we believe
8 that dismissal is necessary because the debtor is seeking from
9 this court a remedy which the statute does not provide. It
10 seeks not an order of rejection, which is what Section 1113
11 provides your Honor may do; it seeks authority to implement
12 upon the issuance of an order authorizing them to implement.

13 That, in effect, your Honor, is a bald-faced
14 effort to achieve leverage in what they have testified are
15 their plans to do in the event your Honor issues an order.
16 And that is not to implement but rather, to bargain. All they
17 are seeking is leverage in their post-order bargaining. That
18 is to say, after you issue an order, they want to then use the
19 leverage that order gives them for bargaining purposes.
20 That's not what 1113 is all about. That's not what 1113 says.
21 That's not what this court is authorized to do. That's what
22 they have asked for. It's beyond the power of this court, and
23 as a consequence, the motion to dismiss should be granted for
24 that and the other reasons indicated. Tank you.

25 MR. TAMBE: The motion, your Honor, should be

1 denied. What you have seen in the last three days of
2 hearings, start --

3 THE COURT: Mr. Simon's motion?

4 MR. TAMBE: Mr. Simon's motion.

5 THE COURT: Not yours.

6 MR. TAMBE: No, we certainly hope you grant our
7 motion. The only motion you're being asked to rule on right
8 now is the one that Mr. Simon just raised. Your Honor, what
9 we have demonstrated through our papers and through the
10 testimony that was put on through several witnesses, including
11 the chief restructuring officer of Dana, is first of all, the
12 competitive nature of the industry in which Dana finds itself
13 and the nature of Dana's finances when compared to what's
14 going on with our competitors.

15 There's conclusive testimony presented by
16 Mr. Stenger that he discussed at length on Monday about what
17 the competition looks like, and what the competition is likely
18 to look like in the coming years, and how Dana needs to
19 fundamentally change its cost structure in order to compete.
20 It needs to fundamentally restructure its U.S. operations in
21 order to compete effectively.

22 That is the benchmark, that is the target that
23 we have set, is to compete against that set of competitors.
24 There's been no evidence submitted by the unions in any of
25 their declarations, and we submit there will be none submitted

1 on the stand that challenges Mr. Stenger and the company's
2 evidence on that ground. This is an issue about making Dana
3 competitive so that it not just barely comes out of
4 bankruptcy, but that it comes out of bankruptcy as a viable
5 company, as a company that will not reenter bankruptcy. And
6 that is the proper test.

7 Now, in terms of the dollar savings, what we're
8 seeing here is a theme that is repeated in many 1113 and 1114
9 motions where what you see is the opponents of the motion
10 trying to cherry-pick off little bits and pieces of the
11 overall restructuring strategy that is put forth by the
12 company. What you saw and what you heard from Mr. Stenger on
13 the stand was the comprehensive step-by-step analysis by which
14 Dana first set its targets, identified where it could achieve
15 savings, and then very methodically, very deliberately and in
16 a very fair and equitable way, went to each of the
17 constituencies to try to obtain the savings and the profit
18 enhancements that were necessary for this company to emerge
19 from bankruptcy.

20 There's an argument made with respect to the
21 settlement with the non-union retirees. There was a
22 calculation of a settlement of \$78 million. This is an OPEB
23 liability of \$400 million, and the claim that somehow the
24 debtors have taken the position in this court that our case is
25 stronger with respect to non-union retirees than the union

1 retirees, no such statement has been made by the debtors.

2 We moved with respect to non-union retirees. We
3 have made no application with respect to the union retirees.
4 Nor have we said anywhere that our case with respect -- we
5 haven't compared our cases with respect to non-union retirees
6 and the union retirees. So it's just flatly wrong to say that
7 we have somehow conceded that we have a different or an
8 inferior case with respect to our rights determined
9 unilaterally. That is an issue that will be discussed. That
10 will be an issue that will be discussed not just in this
11 courtroom, but it will be discussed in negotiations.

12 Mr. Simon believes that it's negotiations that
13 lead to results. That's what they seek. We are ready to
14 negotiate. We have been ready to negotiate. When Mr. Bueter
15 took the stand when he was recalled on Monday, he told you
16 what happened the last time we went in for negotiations.
17 That's what he said on the stand. We got a big zero from the
18 union, zero concessions, and if you read today's newspaper,
19 what Mr. Gettelfinger said very publicly at the meeting
20 yesterday in Detroit was, "No more concessions." That's the
21 line in the sand that the unions have drawn.

22 In terms of "fair and equitable," what you have
23 heard time and again and with respect to the level of cost
24 savings we are seeking on 1113, what we are seeking to
25 implement with respect to the union active employees, are

1 cost-saving measures, cost reductions that have already been
2 put in place with respect to our nonunionized work force.
3 It's only fair that the unions bear their fair share of the
4 cost-cutting measures that the company has enacted across the
5 board.

6 An argument was made in opening and as well
7 right now on this motion for dismissal of the motion, or
8 rejection of the motion, that somehow, Section 1113 does not
9 permit your Honor to issue the order we have requested, which
10 is an order authorizing the debtors to reject the collective
11 bargaining agreements. Curiously, that was an argument not
12 stated ever in the formal papers by the unions. It was raised
13 for the first time in the openings. And we do have response
14 to that. I think their reading of 1113 is flawed and we will
15 address as part of our post-trial briefing as a matter of law
16 why they are wrong and why the case law and the legislative
17 history permits us to seek the relief we are seeking, which is
18 an order authorizing us to reject the collective bargaining
19 agreement.

20 They talk about leverage. The argument they
21 make that, as soon as this court decides 1113 motion, somehow
22 the CBAs are automatically rejected and they can walk out on
23 strike. Talk about seeking leverage, talk about using this
24 forum as what way of putting pressure, that's what they are
25 seeking to do with that argument. It's an unfounded argument.

1 It's not supported by the law and we will demonstrate that in
2 a briefing to your Honor.

3 Your Honor, the debtors stand ready to
4 negotiate. We stand ready to negotiate in good faith with the
5 proposals we've made under 1113 and 1114. We've said that to
6 the unions many times. Failing good faith bargaining and
7 negotiations with the union, we do have rights under the
8 Bankruptcy Code. We have made the necessary showing. Each of
9 the elements of 1113 and 1114 have been more than satisfied by
10 the evidence that we have submitted. We would ask that
11 Mr. Simon's application be denied and the motion for 1113 and
12 1114 relief as requested by the debtors be granted. Thank
13 you.

14 MR. MAYER: Your Honor, we would reserve our
15 right to provide a short statement at the end of this hearing.
16 We take no motion on the motion. We have some concerns. --

17 THE COURT: Mr. Simon --

18 MR. MAYER: -- if the court wishes to hear from
19 us, I'll --

20 THE COURT: No I'll hear from Mr. Simon.

21 MR. SIMON: Just very briefly in rejoinder, your
22 Honor, with respect to the fact that they hadn't heard of the
23 argument respecting this court's jurisdiction, it was only
24 because it was in testimony and in their clarification of
25 their papers that the issue became apparent. At one point in

1 their papers, they do say they are seeking a motion to reject.
2 In other places in their paper, they say they are seeking
3 authority to reject. The witness made it clear that it was
4 authority and therefore, our failure to do so in our formal
5 papers is a red herring and should be ignored by this court.
6 My friend's reference to comments by Mr. Gettelfinger. I
7 refer your Honor to today's New York Times for the full
8 article, but let me read just a piece of it since my --

9 THE COURT: What was in The New York Post?
10 Because you know that the building you're in was named after
11 Alexander Hamilton, the founder of the New York Post, and
12 there's a proprietary interest in that newspaper above others.
13 So I don't think it's appropriate, Mr. Simon, for you to exalt
14 one newspaper or another.

15 MR. SIMON: Your Honor, it is not for me to
16 determine the relative merits of the New York Times and The
17 New York Post. I leave that to others, including your
18 Honor --

19 THE COURT: Aaron Burr took care of
20 Mr. Hamilton --

21 MR. SIMON: I think it's one of the few cases in
22 which one can say *res ipsa loquitur*, and I believe there's an
23 awful long distance, and you can measure it with the arrows
24 pointing in whichever direction you please, between Alexander
25 Hamilton and Rupert Murdoch.

1 The New York Times story today says, quoting
2 Mr. Gettelfinger, "Our union does not want to strike. But
3 when employers act as if collective bargaining is a one-way
4 street and not a two-way street, then we will do what we have
5 to do, make no mistake about it. Collective bargaining is not
6 collective begging. And where we have demonstrated
7 cooperation, it would be a grave mistake to equate our actions
8 to capitulation."

9 The UAW, and the Steelworkers, and I know I can
10 speak for them and witnesses can and will, are very much in
11 accord with my friend's proper citation to you of the New York
12 Times.

13 Your Honor, 1113, unlike my friend's commentary,
14 is in fact a cherry-picking institution. The employer is
15 obligated to select and propose only those modifications that
16 are necessary to reorganization. And the argument on a pure
17 quantitative basis, Judge -- asking you to look at the Second
18 Circuit case law only; you don't have to go to the Third
19 Circuit, you don't have to go elsewhere -- is that a \$20
20 million labor cost reduction in an eight-billion-dollar
21 company under any stretch of the imagination cannot be said to
22 be necessary.

23 The company is trying to make uniform its wage
24 rates among its various North American plants. The company,
25 according to its testimony, would like to get out of the

1 business of retiree insurance. No doubt they would like to
2 achieve both such objectives. But it's not for this court to
3 engage in social engineering. It's not this court's job to
4 tidy up the fact that in the past they negotiated many
5 different labor contracts around the country. Neatness
6 doesn't count. Necessity counts. They might like to have
7 uniformity. They might like to get out of the retiree
8 insurance business. That's not your job.

9 THE COURT: Thank you. Anyone else want to be
10 heard?

11 The motion to dismiss is denied. Call your
12 witness.

13 MR. LEVINE: Your Honor, at this point, the
14 unions are prepared to present their case in opposition to the
15 motion with their witnesses, and I would ask for two to three
16 minutes, just to set up the appropriate binders, if that's
17 okay. Maybe a five-minute recess, your Honor --

18 THE COURT: You've got it.

19 MR. LEVINE: Thank you.

20 (Recess taken.)

21 MR. LEVINE: Your Honor, the unions are pleased
22 to present Mr. James Robinson as their first witness.

23 J A M E S R O B I N S O N , having been duly sworn, was
24 examined and testified as follows:

25 DIRECT EXAMINATION BY MR. LEVINE:

1 Q. Mr. Robinson, by whom are you employed, sir?

2 A. United Steelworkers.

3 Q. And what is your position?

4 A. I'm district director for District 7, which is
5 the States of Illinois and Indiana.

6 Q. And for how long have you served in that
7 capacity, sir?

8 A. I was elected in November of 2001 and took
9 office the following month.

10 Q. And when you say you were elected, you were
11 elected by whom?

12 A. The members in District 7.

13 Q. The members of the USW?

14 A. Yes. We have referendum elections for our
15 executive board members.

16 Q. And prior to serving as district director, did
17 you have the occasion to be employed by the USW?

18 A. I was -- I was appointed to the U.S. -- at that
19 time USWA staff in 1994, and served as staff representative,
20 subdistrict director, assistant to the director and then I was
21 elected director.

22 Q. And in addition to your experience working for
23 the Steelworkers at the international level, have you had any
24 additional experience working with any affiliates of the
25 United Steelworkers?

1 A. I was hired at Inland Steel in East Chicago,
2 Indiana in 1977, joining Local 1010 of the United
3 Steelworkers. I was elected to the safety committee in 1973,
4 to the grievance committee in 1976. I served four terms as
5 grievance committeeman at the number 4 basic oxygen furnace.
6 I was appointed -- and working full time in the mill during
7 those -- those years.

8 I was appointed arbitration coordinator doing
9 arbitrations for the local union in 1988, working primarily
10 full time at the local union hall. 1991, I was elected
11 chairman of the grievance committee.

12 Q. Now, you testified that you began, or at one
13 point, you began working for Inland Steel; is that correct?

14 A. Yes.

15 Q. And flesh that out a little, if you would. Was
16 that after college or high school?

17 A. I attended college briefly and unsuccessfully,
18 and dropped -- in short, I dropped out and went to work in the
19 mill, like everybody else, intending to work there for a while
20 and make a little money and then go do something else like go
21 to California. It was the '70s. And I got active in the
22 union and got married and the next thing I knew, it was thirty
23 years later.

24 THE COURT: Did you get to California?

25 THE WITNESS: Um -- not until recently. And

1 under different circumstances.

2 A. I was a mechanic, and --

3 Q. I'm sorry, just -- you were a mechanic in the
4 beginning?

5 A. No, I went through an apprenticeship, became a
6 mill mechanic, and got active in the union and as a mill
7 mechanic, I was a good union representative, is the best way
8 to put it in terms of my skills.

9 I did go back to school. I received a
10 Bachelor's degree in labor studies from Antioch University of
11 Ohio through the George Meany Center For Labor Studies in
12 Silver Spring, Maryland. Following that, I attended law
13 school at Loyola University School of Law in Chicago and took
14 the bar exam for Illinois and Indiana, for both states, in
15 1997 and was admitted in both states and I maintain those
16 licenses.

17 Q. You are in a room, sir, where being a lawyer
18 will not be helpful.

19 But I --

20 A. Also, it won't make me very outstanding, either.
21 There sure are a lot of them.

22 Q. The judge is the trier of the fact, you'll see.
23 But let me ask you something else. We know what lawyers do
24 here. But a lot of us don't know what a mill mechanic does.
25 And could you tell us a little bit about what you did as a

1 mill mechanic?

2 A. Well, at Inland Steel, a mill mechanic is a
3 combination craft job. Something that historically, we had
4 millwrights and boilermakers and pipefitters and a variety of
5 specialized crafts. Over the years, in the steel industry,
6 the union negotiated those -- those crafts into where we are
7 now, which is a single mechanical craft and a single
8 electrical craft. That process was underway when I hired in
9 the mill.

10 I hired into a department where the mill
11 mechanic craft existed, and that job essentially required all
12 the mechanics -- consisted of all mechanical work in the mill
13 with the exception of welding. At that time, welder was still
14 a separate job.

15 So we did everything from working on pumps to
16 changing out large hood sections on the furnace.

17 Q. And for how many years did you serve as a mill
18 mechanic?

19 A. I worked essentially full time in the mill for
20 17 years. Obviously, I was off on union business now and
21 again, but essentially working full time in the mill for 17
22 years. Starting in 1988, I worked most of the time for the
23 local union as our arbitration coordinator, I still went back
24 occasionally and worked on the job in the mill. Same thing
25 was true as when I was chairman of the grievance committee.

1 Starting in 1994, when I went to work on the international
2 staff, I no longer went back to work in the plant.

3 Q. Understood, sir. Did ever break a sweat working
4 as a mill mechanic?

5 A. The basic oxygen furnace and caster department
6 is steel production. Molten steel is really hot, so, yes,
7 breaking a sweat is part of the job.

8 Q. I'd like to refer you, sir, Mr. Robinson, to tab
9 104 in front of you --

10 MR. LEVINE: -- which is Union Exhibit 7, your
11 Honor, behind tab 104.

12 A. Yes.

13 Q. Mr. Robinson, is that a declaration that you
14 prepare in connection with this 1113/1114 proceeding?

15 A. Yes.

16 Q. Other than the typographical errors that might
17 exist in this document, are there any corrections that you'd
18 like to make to what you declared on February 22nd?

19 A. Yes, there is one statement in here that is
20 inaccurate.

21 Q. Do you know the paragraph or --

22 A. I'm looking.

23 Q. Well, let me give you a hint, at the risk of
24 being accused of leading you. Would you turn, please, to
25 paragraph 16, and read that paragraph.

1 A. Want me to read it out loud?

2 Q. No, read it to yourself and tell us if there is
3 anything that you'd like to correct --

4 A. Yes, the last sentence is incorrect.

5 Q. Would you explain the, what is incorrect and
6 what is correct?

7 A. We had a tiff with Dana over the company setting
8 up meetings to provide proposals at the local unions in Fort
9 Wayne and Marion. The staff representatives assigned to those
10 locals were not notified of those meetings. I learned,
11 actually at my deposition, that a representative of the
12 company had called Danny Wirges, who at that time was an
13 assistant to the director in District 7, and notified him of
14 the meetings and offered him the opportunity to be there.

15 He said it wasn't necessary.

16 Q. And do you know of any reason as to why you
17 wouldn't have heard about this from Mr. Wirges? He was your
18 assistant, was he not?

19 A. Danny retired the 1st of the year. Most of us
20 are hopefully familiar with people getting ready to retire.
21 They mentally leave before of they physically leave.

22 MR. HAMILTON: Your Honor, at this point, these
23 are facts that we disputed and he's now being asked to testify
24 on behalf of why somebody else did something without any
25 foundation. I object.

1 THE COURT: I'll allow him to clarify this.

2 Q. Just clarify what you know about paragraph 16,
3 that's all I'm getting to. Don't mean to --

4 A. All I'm saying is that I know that the reason
5 that Danny didn't call me, was --

6 THE COURT: You know where the anomalies are.
7 Could you very quickly get to them?

8 MR. LEVINE: I did think that it should be
9 clarified, and I believe it has been. Thank you. I'll move
10 on, your Honor.

11 Q. Have you ever been involved in collective
12 bargaining?

13 A. Yes.

14 Q. Now, for how long have you been involved in
15 collective bargaining presumably on behalf of the Steelworkers
16 at either the local or international levels?

17 A. Collective bargaining, as I understand it, which
18 is a very broad term, it includes the day-to-day contract
19 enforcement and problem-solving activities in the plant. I,
20 my involvement in collective bargaining began in 1973 with my
21 activities as a representative of my fellow employees on the
22 safety committee.

23 Q. Now, does collective bargaining involve, at
24 least on occasion, sitting across the table from the company
25 and exchanging paper with proposals and counterproposals?

1 A. That's a part of it. In my experience and in my
2 opinion, a relatively small part.

3 Q. Okay. Well, without getting into what your
4 opinion is, based on your experience, what else has collective
5 bargaining involved from your experience over the past thirty
6 years?

7 A. Well, most collective bargaining involves
8 talking, discussing issues, making arguments, assessing
9 positions between representatives of the two sides, and that
10 occurs, especially in larger contract negotiations, that
11 occurs at many levels.

12 It also involves a great deal of internal
13 negotiations, trying to make sure that everybody on our side
14 is -- we reach a position that everybody can agree to and then
15 sign on to as our position.

16 I've been told by management lawyers that the
17 same thing occurs on the other side. That's in some respects
18 more difficult and more time-consuming than the negotiation
19 across the table.

20 Q. Why is that, sir, from your understanding?

21 A. Because in my experience, the internal
22 negotiations often involve things that people care very deeply
23 and personally about, because we're talking about the jobs of
24 the people involved. And across the table, it's much -- the
25 things that people care about tend to be at a higher level,

1 and less personal.

2 Q. Understood. Now, as district director, do you
3 have jurisdiction over any facilities with USW members who are
4 employed by the debtors, in this case, Dana?

5 A. Yes. We have two local unions representing Dana
6 employees at the Fort Wayne plant and at the Marion plant.

7 Q. And what role, if any, do you play as district
8 director with respect to those employees at those facilities?

9 A. Well, the -- I guess the best place to begin is,
10 the constitutional definition of the district director's role
11 is to oversee the -- oversee the actions, the responsibilities
12 of the international union within the district, as well as to
13 carry out assignments given by the international president.

14 Q. Now, were the Steelworkers at those facilities
15 formally represented by another international union?

16 A. Yes. The Fort Wayne and Marion locations were
17 originally organized by the Allied Industrial Workers. That
18 union merged into what became PACE, which the Paperworkers,
19 the Allied Industrial Workers and the Oil, Chemical and Atomic
20 Workers. PACE last year, PACE merged into the Steelworkers
21 and last year, about last March, the PACE districts and the
22 steel worker districts were merged and those locals became a
23 part of District 7.

24 Q. And were there formerly other Dana facilities in
25 the geographical jurisdiction of District 7?

1 A. Yes. There was a plant in Andrews, Indiana, and
2 a plant in Mitchell, Indiana, both of which either have closed
3 or are in the final stages of closing.

4 Q. And were the Steelworkers involved in any way
5 with discussions or negotiations with Dana in connection with
6 those shutdowns?

7 A. Yes. Danny Wirges negotiated the closure
8 agreement for Andrews and Chris Bolte, a staff representative
9 for the Steelworkers in District 7, negotiated the closure
10 agreement in Mitchell.

11 Q. Would you turn, please, to paragraph 6 of your
12 declaration.

13 MR. LEVINE: It's on page 2, your Honor. And if
14 I may, I would like to read the first couple of sentences of
15 that paragraph into the record.

16 THE COURT: Do you have another binder? This
17 one has an opening and when I turn the pages, it kicks them
18 out.

19 MR. LEVINE: Your Honor, that is fine. In fact,
20 mine has little tabs on it.

21 THE COURT: You'll have a problem if you take
22 mine.

23 MR. LEVINE: I don't want to take the creditors'
24 committee. They've been working the whole case to get their
25 own binder. But it's the judge.

1 DEPUTY CLERK: It's okay. I gave him mine.

2 (A pause in the proceedings.)

3 MR. LEVINE: May I proceed, your Honor?

4 THE COURT: Sure.

5 Q. I'd like to read paragraph 6, at least the first
6 part of it and then ask you some questions, Mr. Robinson.

7 In paragraph 6, you declare that, "During the
8 past two decades and particularly since 2000, the USW and its
9 members in several industries, including the steel, aluminum
10 and mining industries, have faced enormous challenges
11 occasioned by international trade policies, escalating
12 healthcare costs, and other factors that have challenged
13 America's industrial sector."

14 Now, do you stand by that statement?

15 A. Yes.

16 Q. You then state that, "The USW has responded to
17 current conditions with progressive and innovative contract
18 initiatives that have facilitated more rational and equitable
19 corporate reorganizations and which, at the same time, have
20 protected the economic security of its affected members and
21 retirees."

22 Could you, I assume you stand by that statement
23 as well.

24 A. Absolutely.

25 Q. And could you shed a little light about what

1 your experience has been with respect to the Steelworkers and
2 its working with companies that are challenged by issues such
3 as so-called globalization and the flattening of the world.

4 A. Well, let me mention first of all two industries
5 or two situations in which I was not personally involved, but
6 were major issues within the union. The Sarco negotiations in
7 Arizona and Texas, Sarco is a very old mining company in the
8 copper industry, primarily, in bankruptcy after a long and
9 difficult strike and a lot of difficult negotiations.

10 A new contract was recently approved in the
11 Bankruptcy Court in Texas. Ormetluminum -- and that's a part
12 of a larger restructuring plan that is moving forward --
13 Ormetaluminum, we had similar problems with bankruptcy and a
14 long strike and plants being shut down. And the aluminum
15 smelter part of that operation just restarted after a lot of
16 hard work and negotiations and working with -- with a buyer to
17 secure a power contract in Ohio and permit it to run.

18 More personally, I can talk about the steel
19 industry, because I was directly and personally involved in
20 that. Since -- really, we've been in a sort of constant
21 crisis in the steel industry since the early 1980s. In 1986,
22 we developed innovative approaches that involved major
23 restructuring of our contracting-out protections. Those were
24 secured in LTV negotiations, just prior to them showing up in
25 your courtroom.

1 We also negotiated a partnership agreement that
2 gave us a much greater participation in the business
3 operations and also board seats nominated by the union, all of
4 which created over the years, and I can say this with some
5 amazement because I was very skeptical at the time,
6 Steelworkers in the basic steel industry today have a much
7 deeper knowledge of the business and the realities and what's
8 necessary to make those plants profitable and competitive than
9 anybody would have dreamed of when I started.

10 We ultimately, with the latest round of steel
11 crises in 2003, we negotiated -- let me back up. LTV
12 ultimately shut the plants down. We worked with a buyer,
13 Wilbur Ross, to -- with the firm ISG to buy those shutdown
14 plants and restart them. I was secretary of -- or my
15 predecessor was secretary of the ISG negotiations. I sat in
16 for him with Dave McCall, who was the chairman, and we worked
17 through that process. The plants were back up and running.

18 We then negotiated a quite innovative labor
19 agreement, streamlined the contract, reduced the number of job
20 classifications, and expanded duties to enhance productivity.
21 That worked exceptionally well and ISG expanded and acquired
22 Bethlehem and a piece of the old Acme.

23 We then went into negotiations with U.S. Steel.
24 They were attempting to buy National out of bankruptcy, the
25 National plants. And AK Steel came in as a -- as another

1 potential buyer. We negotiated with both. We reached the
2 same type of innovative agreement with U.S. Steel. AK was not
3 interested in that, and wanted a more traditional approach,
4 for a variety of reasons, not the least of which was, we
5 believed, and we think we have been proven right, that our
6 innovative approaches to contract negotiation in the steel
7 industry produced efficient, productive, profitable
8 operations, and we reached that agreement with U.S. Steel. We
9 did not reach agreement with AK steel. We supported U.S.
10 Steel's purchase of the National plants in the Bankruptcy
11 Court. That was approved.

12 Today those National plants, as well as the U.S.
13 Steel plants, are running, are employing our members, and U.S.
14 Steel is enjoying significant profitability in District 7.
15 One of the most successful U.S. Steel plants is Granite City,
16 Illinois, an old National plant, which has surprised everybody
17 for becoming a real shining star to productivity,
18 profitability within U.S. Steel. And I think it's a fair
19 statement to say that both sides would credit the labor
20 agreement that we negotiated for a significant amount of that
21 success.

22 Q. Thank you. You were not directly involved in
23 the Tower Automotive proceeding, am I correct?

24 A. No.

25 Q. You do understand that Tower --

1 A. Yes, you are correct. No, I wasn't involved.

2 Q. Would you please turn to tab 121.

3 MR. LEVINE: Same problem, your Honor, as you
4 had with my binder. It's Union Exhibit 38, which is tab 121.

5 Q. Mr. Robinson, do you have Union Exhibit 38 in
6 front of you?

7 A. Yes.

8 Q. Have you seen this document before?

9 A. Yes, I was the primary author of it.

10 Q. Okay. And when did you participate in the
11 authoring of this document?

12 A. Directly after the meeting that's discussed in
13 the document and of all the -- well, the union representatives
14 that are in the picture. The date escapes me, but --

15 Q. Was it sometime last fall, perhaps?

16 A. No, it was more recent.

17 Q. Could you --

18 A. This was the meeting where we came together and
19 formed the Dana Unions Council.

20 Q. Well, explain what the Dana Unions Council is.

21 A. We met with -- the UAW had an existing Dana
22 council of the local unions representing Dana employees. And
23 what we did was, we brought the Fort Wayne, Marion and
24 Henderson, Kentucky Steelworker locals together with the UAW
25 locals and agreed that we would form a broader council, the

1 Dana Unions Council, which would -- be -- consist of all of
2 the union members from both unions working for Dana.

3 Q. And what was the purpose of this leaflet?

4 A. Well, the purpose of the leaflet, one of the
5 things we did at the meeting was to develop this set of
6 principles that would guide our negotiations. And we wanted
7 to make sure that the -- that we informed the members of those
8 principles that we would be working from. And we also wanted
9 to obviously tell the members that we had formed this Dana
10 Unions Council, where we would be working in a united way to
11 work our way through the problems of the bankruptcy.

12 MR. LEVINE: At this time, I would ask for
13 Exhibit 38 to be received, your Honor.

14 MR. HAMILTON: No objection, your Honor.

15 THE COURT: Received.

16 MR. LEVINE: I would also ask for Mr. -- I
17 forgot to ask for Mr. Robinson's declaration to be received
18 into evidence.

19 MR. HAMILTON: On the declaration, your Honor,
20 paragraphs 12 through 16 appear to be hearsay. If counsel
21 wants to establish some foundation for the witness to report
22 on it, I probably won't object, but --

23 MR. LEVINE: I -- I'm sorry?

24 MR. HAMILTON: On their face, they're hearsay.

25 MR. LEVINE: I don't want to delve into

1 negotiations any more than is necessary. If Mr. Hamilton
2 believes that that is hearsay, we would respectfully disagree.
3 I could establish further Mr. Robinson's authority over
4 District 7 and how he is familiar with the various meetings,
5 negotiating sessions that he describes if the court deems it
6 necessary.

7 We really don't think it's necessary, your
8 Honor.

9 THE COURT: I'll allow it. It doesn't appear to
10 be anything that the court can't evaluate properly.

11 MR. LEVINE: It's Exhibit 7.

12 (Union Exhibit 7, received in evidence, as of
13 this date.)

14 Q. Have you participated in negotiations with Dana
15 in connection with the 1113 and 1114 proceeding?

16 A. Yes.

17 Q. And otherwise?

18 A. Yes.

19 Q. And subsequent to your, the preparation of your
20 declaration, did you have the occasion of participating in a
21 negotiating session on March 19th?

22 A. I will have to confess to being terrible at
23 dates. The dates in my declaration were -- were asserted
24 based on checking my calendar to make sure that they were
25 accurate. If that's what -- if March 19th is the date in the

1 declaration, it's one that I confirmed before we put it in.

2 Q. Do you recall meeting with Mr. Bueter and other
3 representatives from Dana within the past two weeks or so?

4 A. Oh, yes.

5 Q. That's what I'm talking about.

6 A. That's fine. Yes.

7 Q. And was an agreement reached at that time?

8 A. No.

9 Q. Without getting into anything about your
10 strategy or anything, could you tell us whether the parties
11 agreed to meet in the future?

12 A. Yes.

13 Q. And do you know if that's the intention of the
14 Steelworkers and the Auto Workers United Coalition?

15 A. We are -- we have put a proposal on the table
16 that we believe creates a framework for a successful outcome,
17 and it's our intention to pursue that to a successful
18 conclusion.

19 Q. Has that been communicated to the company?

20 A. Yes.

21 Q. I'd like to turn to you Union Exhibit 37 --

22 MR. LEVINE: -- which is behind tab 121, your
23 Honor -- I'm sorry, 120. It's Union Exhibit 37.

24 Are you there, your Honor?

25 Q. Do you have that in front of you, Mr. Robinson,

1 Union Exhibit 37?

2 A. Yes.

3 Q. Have you seen this document in the past?

4 A. Yes.

5 Q. Could you describe what it is, please.

6 A. Well, when I refer to a proposal that we believe
7 establishes a framework for a successful outcome, this was our
8 original -- this was the Steelworkers' proposal to Dana that
9 led to a joint proposal. But this is the, essentially the
10 framework that I was referring to.

11 Q. And do you know what, if any, significance is
12 attached to the date of January 17 on the front of the
13 document?

14 A. We -- I believe -- again, I apologize for my --

15 Q. What's your understanding?

16 A. -- yes, we met with the company, I believe, and
17 gave them this proposal on the 17th. But I can tell you the
18 sequence, but I can't remember the date.

19 Q. Tell us the sequence.

20 A. Well, we've met with the company at Toledo prior
21 to, at the end of last year, sort of in between the holidays.
22 And we had another meeting with the company in January. And
23 we have been attempting to engage the company in bargaining
24 around this framework, and that's been our, the purpose of
25 providing this document to, it turns out to have been

1 repeatedly.

2 Q. Now, this document as I read it doesn't contain
3 any proposals for a wage concession.

4 A. It does not.

5 Q. And in fact, I don't see any monetary
6 concessions proposed in this document.

7 A. Correct.

8 Q. Are you still calling this a proposal in
9 connection with negotiations?

10 A. Yes.

11 Q. How could that be?

12 A. Well, this proposal on its face assumes no
13 change in the economics. But it is a framework for a
14 successful outcome. The company has repeatedly put proposals
15 for economic reductions on the table. We have not accepted
16 those. But everything's a matter for negotiations. We think
17 this is the proper framework in which those negotiations can
18 proceed, and conclude, for -- and conclude in a manner in
19 which our members will have an opportunity as they have in the
20 steel industry to have good jobs and profitable plants.

21 Q. And let me ask you is this, then: You keep
22 referring to the term "framework."

23 A. Yes.

24 Q. Could you just elaborate on what you mean by the
25 concept of "framework" in connection with these negotiations.

1 A. One of the things that we have learned from
2 dealing with distressed manufacturing companies, which is
3 unfortunately including an increasing number of manufacturing
4 companies in the global -- globalized environment we exist in,
5 is that merely rearranging the furniture in the collective
6 bargaining agreement doesn't get at the underlying problems;
7 and over the years, we have seen situations where we don't
8 work to address the problems, and simply agree to lower labor
9 costs, that the problems don't get addressed and the company
10 returns and asks for lower labor costs again, and eventually,
11 we reach the point where we're not going to agree to lower
12 labor costs.

13 And a very good example was a company called
14 Spectralight Consortium in Madison, Illinois. After two or
15 three rounds of wage cuts, the membership said, "Enough's
16 enough, we're not working for less than that," and there was a
17 very difficult strike, and the end result was, the company
18 went out of business.

19 That's not a good way -- a good way to operate.

20 MR. LEVINE: I would ask for Union Exhibit 37 to
21 be received into evidence, your Honor.

22 THE COURT: Are you with us, counselor?

23 MR. HAMILTON: Yes. No objection, your Honor.

24 THE COURT: Received.

25 (Union Exhibit 37, received in evidence, as of

1 this date.)

2 MR. LEVINE: Thank you, your Honor.

3 Q. Would you turn, please, to Union Exhibit 5 --

4 MR. LEVINE: -- which is behind tab 131 in our
5 binder, your Honor. Union Exhibit 55. Five-five. Are you
6 there, your Honor?

7 Q. Mr. Robinson, are you familiar with Union
8 Exhibit 55? Have you seen it before?

9 A. Yes.

10 Q. And what is it?

11 A. This proposal was given to the company jointly
12 by the Steelworkers and the auto workers following our
13 formation of the Dana Unions Council, and our agreement to
14 work jointly.

15 Q. Okay. And how, if at all, is it different from
16 Union Exhibit 37, which we were talking about earlier?

17 A. There are changes. Primarily, those changes are
18 related to including the UAW.

19 Q. Does --

20 A. The underlying framework that I've been talking
21 about remains the same.

22 Q. I was going to ask you that. Does this continue
23 to be the framework for negotiations that have been tendered
24 by the joint UAW/USW bargaining coalition to the company?

25 A. Yes.

1 MR. LEVINE: I would ask that Union Exhibit 55
2 be received into evidence, your Honor.

3 MR. HAMILTON: No objection.

4 THE COURT: It's received.

5 (Union Exhibit 55, received in evidence, as of
6 this date.)

7 THE COURT: Do I understand this is the same
8 proposal essentially as the one in January?

9 THE WITNESS: There are changes --

10 THE COURT: With additional parties --

11 THE WITNESS: Conceptually, it's the same.

12 Q. Are you involved specifically in compiling
13 information that the union has asked for in connection with
14 negotiations with the company?

15 A. No.

16 Q. And who is the individual, to your knowledge,
17 who is principally responsible for that role?

18 A. Leon Potok.

19 Q. Now, let me ask you this, Mr. Robinson:

20 To your knowledge, has the USW communicated its
21 willingness to negotiate in good faith with Dana?

22 A. I believe we have.

23 Q. Has the USW communicated its willingness to
24 strike if necessary under appropriate circumstances to the
25 company?

1 A. I have said that to the company, and we have
2 made that point in a couple of our leaflets that we distribute
3 to our members.

4 Q. Mr. Robinson, have you in your thirty years of
5 experience, thereabouts, with the Steelworkers participated in
6 any strikes?

7 A. Yes.

8 Q. Have you been involved in organizing and/or
9 directing such strike activity?

10 A. Yes.

11 Q. And is that a process that you are familiar with
12 that you would be able to apply with respect to Dana, if
13 necessary?

14 A. Yes.

15 Q. And that has been communicated to the company?

16 A. As I said, we have made clear in the leaflets
17 that we have produced for our members, which everybody knows
18 that the company will read as well, and I've said that across
19 the bargaining table.

20 MR. LEVINE: Mr. Robinson, I have no further
21 questions for you. Thank you very much.

22 MR. HAMILTON: Your Honor, I have witness
23 notebooks for the cross. May I approach?

24 THE COURT: Sure.

25 (A pause in the proceedings.)

1 CROSS-EXAMINATION BY MR. HAMILTON:

2 Q. Mr. Robinson, my name is Robert Hamilton of
3 Jones, Day. We met briefly here this morning. I'm
4 representing the debtors. I'll be cross-examining you.

5 As I understand it, you are a licensed
6 practicing lawyer, is that correct?

7 A. Yes.

8 Q. And are you familiar with the requirements of
9 Section 1113 of the Bankruptcy Code?

10 A. Generally.

11 Q. And are you familiar with the sections that
12 relate to whether or not a union has good cause or not to
13 reject a Section 1113 proposal proposed by a debtor?

14 A. Probably not.

15 Q. You said you had some twenty, thirty years'
16 experience negotiating collective bargaining agreements.
17 During that period of time, have you been negotiating
18 collective bargaining agreements during Chapter 11
19 proceedings?

20 A. Been involved in them.

21 Q. In those ones that you were involved in, were
22 you involved in negotiating collective bargaining agreements
23 when there was a pending Section 1113 proposal made by the
24 debtor?

25 A. Probably not as directly as in this case, no.

1 Q. This is --

2 A. We had an 1113/14 issue at Spectralight
3 Consortium, the strike that I referred to, but the
4 circumstances were much different.

5 Q. Well, in that case, had the debtor made a
6 Section 1113/1114 proposal to the union?

7 A. Yes.

8 Q. And were you representing the union in those
9 negotiations?

10 A. No, I was working with the subdirector in
11 southern Illinois, who works for me, and he was actually at
12 the table.

13 Q. And do you know, did the unions make a formal
14 written counterproposal in that case to the debtors, Section
15 1113/1114 proposals?

16 A. We effectively told them where they could get
17 off.

18 Q. So you did not make a written counterproposal.

19 A. No.

20 Q. And the result was the strike and the eventual
21 liquidation of the company.

22 A. Yes.

23 Q. Let's talk about the PACE merger, which happened
24 just last year, is that right?

25 A. The merger happened two years ago. The merger

1 of the PACE regions with the Steelworker districts happened
2 last year.

3 Q. Okay. So the -- the merger between PACE and the
4 Steelworkers district happened last year, is that right?

5 A. Yes. That's an administrative result of the
6 formal merger of the two unions.

7 Q. Now, prior to the administrative merger that
8 happened last year, was Mr. Sturgis the head of the PACE
9 district?

10 A. Wirges?

11 Q. Yes.

12 A. No.

13 Q. Who was the head?

14 A. Bill Gibbons.

15 Q. What was Mr. Wirges' position?

16 A. Assistant to Bill.

17 Q. And then after the administrative merger, who
18 did Mr. Wirges report to?

19 A. Me.

20 Q. You made a reference to paragraph 6 of your
21 declaration, which in the cross-examination binder is the
22 first tab, tab A. It's Union Exhibit number 7.

23 A. Yes.

24 Q. And you made a reference to the progressive and
25 innovative contract initiatives that the USW has responded to

1 with respect to healthcare, rising costs and global
2 competition; is that right?

3 A. Yes.

4 Q. All right. What are the progressive and
5 innovative contract initiatives that you have formally
6 proposed to the debtor in this case?

7 A. We believe that the framework that we have
8 proposed to the debtor is progressive and innovate if I have.

9 Q. And that's to increase job security for the
10 union employees, right?

11 A. That's part of it.

12 Q. If we can go to the paragraph 11 of your
13 declaration, this is the November 1st meeting.

14 A. Yes.

15 Q. You didn't attend that meeting, is that correct?

16 A. That's correct.

17 Q. You were only told what happened at that meeting
18 by somebody?

19 A. Yes.

20 Q. Who told you?

21 A. Ron Bloom.

22 Q. In paragraph 12, you say that at that November
23 1st meeting, Dana made no proposal and, "It did not provide
24 any financial data as part of it summary of intentions."

25 Do you see that?

1 A. Yes.

2 Q. How do you know that?

3 A. That's what I was told.

4 Q. And if you look at tab B of your binder,
5 section -- Debtor's Exhibit number 274, dated November 1st,
6 2006 --

7 A. Yes.

8 Q. -- isn't it true that that information was
9 provided to the unions at the November --

10 A. I wasn't there. I cannot answer the question.

11 Q. You don't know?

12 A. I put what I believed to be true in my
13 declaration.

14 MR. HAMILTON: Your Honor, we would offer
15 Debtor's Exhibit number 274, tab B, into evidence?

16 MR. LEVINE: With this witness, we object, your
17 Honor.

18 THE COURT: Do you want voir dire? Because the
19 witness indicates he has knowledge as to what transpired at
20 that meeting, and I find it a little difficult to conceive
21 that he's not aware that there was this document discussed
22 there.

23 MR. HAMILTON: Let me ask, your Honor.

24 Q. Mr. Robinson, you've seen Exhibit 274 before,
25 right?

1 A. Yes.

2 Q. It has been provided to you, correct?

3 A. Yes.

4 Q. You just don't know if it was provided at the
5 November 1st meeting which is the same date as this document,
6 right?

7 A. Correct.

8 MR. LEVINE: No objection, your Honor.

9 THE COURT: Received.

10 (Debtor's Exhibit 274, received in evidence, as
11 of this date.)

12 Q. Now, your next paragraph in your declaration
13 talks about the meeting on November 29th in Ypsilanti, is that
14 right?

15 A. That's right.

16 Q. You weren't at that meeting, either; right?

17 A. No.

18 Q. And then paragraph 14, you're again discussing
19 the November 29th meeting, right?

20 A. Yes.

21 Q. And you say there that, "The sole purpose of the
22 meeting was for Dana to present its Section 1114 proposals to
23 the USW and UAW." Is that correct?

24 A. That's what -- that was my information and I
25 believed that to be true.

1 Q. Who told you that?

2 A. Ron Bloom -- or David Jury, I don't know which.

3 Q. Isn't it true, sir, if you take a look at tab

4 D --

5 A. Did you say B or D?

6 Q. D as in "dog," Debtor's Exhibit 176. It's a
7 PowerPoint dated November 29th.

8 A. Yes.

9 Q. Isn't it true that that PowerPoint was presented
10 at that meeting?

11 A. I can't say. I wasn't there.

12 Q. Did you ever ask anybody if it was?

13 A. No.

14 Q. Have you seen this document before?

15 A. I'm sure I have. I've seen about 28
16 PowerPoints.

17 Q. And if you look at the next tab, tab E, Debtor's
18 Exhibit 277, it contains a substantial amount of financial
19 information about the plants, correct?

20 A. It would appear that way.

21 Q. Have you seen that document before?

22 A. I have absolutely no idea.

23 Q. Do you know if that document was provided at the
24 November 29th meeting?

25 A. I have absolutely no idea.

1 Q. Isn't it true, sir --

2 A. I don't look at the numbers. That's what Leon
3 does.

4 THE COURT: Have you seen the document?

5 THE WITNESS: I don't know. I've seen documents
6 with numbers but we have an expert who looks -- we have an
7 expert who reviews the financial information. I -- I rely on
8 him to explain it to me. I don't read the numbers because I'm
9 not capable of making the evaluation.

10 Q. I understand that, sir --

11 THE WITNESS: So I don't know if I've seen this
12 set of numbers or not.

13 Q. I understand that, sir. What I'm focusing on is
14 your first sentence in paragraph 14 where you say the sole
15 purpose of the November 29th meeting was to make a proposal.

16 Isn't it true, sir, that exhibits behind tabs D
17 and E were also presented at that meeting for the purposes of
18 the debtor's demonstrating the economic case for why they
19 needed Section 1113 relief?

20 A. Once again, I can't answer that question. I
21 wasn't at the meeting. I put in my declaration my
22 understanding based on our internal discussions of what took
23 place.

24 Q. Which is based totally on what somebody else
25 told you who is not here today to be cross-examined, right?

1 A. Of course.

2 Q. Paragraph 16. Now, this is the paragraph that
3 you purported to correct on the record at the beginning of
4 your direct examination, correct?

5 A. I didn't purport. I did.

6 Q. Okay. Well, let's talk about it. You say,
7 "During the week of December 4, 2006, Dana also conducted a
8 short meeting with the local bargaining -- union bargaining
9 committees at each of the plants that are the subject of
10 Dana's requests for contract modifications," correct?

11 A. Yes.

12 Q. Now, you're referring to meetings that occurred
13 at the Henderson, Caldwell, Fort Wayne and Marion plants;
14 right?

15 A. No.

16 Q. You're not?

17 A. No.

18 Q. What are you referring to?

19 A. Fort Wayne and Marion.

20 Q. You're not referring to the meetings in this
21 particular sentence that occurred at Henderson and Caldwell?

22 A. No.

23 Q. Okay. Did meetings occur with the local
24 representatives at Henderson and Caldwell?

25 A. I have had no involvement with Caldwell. I have

1 no idea what's happened at Caldwell. Caldwell has not been a
2 part, from my perspective, of the negotiation process that
3 I've been involved in because Caldwell when we began this
4 process was for sale, and we did not propose to bargain at
5 Caldwell with Dana. We proposed to bargain with the buyer. I
6 believe the sale's been completed, but I don't know.
7 Henderson has been a part of this process because they are not
8 for sale. And I do -- I am told by the local union
9 representatives at Henderson that there were meetings that
10 took place at Henderson as well.

11 Q. That there was a meeting that took place?

12 A. Yes.

13 Q. Isn't it true, sir, that meetings took place at
14 both Henderson and Caldwell at which staff representatives of
15 the national USW were invited and did attend?

16 A. As I just told you, I don't know anything about
17 Caldwell.

18 Q. Well, let's talk about Marion and Fort Wayne. I
19 believe you said that you learned at your deposition that
20 Mr. Wirges had been invited to attend those meetings, is that
21 correct?

22 A. That's what I was told, yes.

23 Q. And then you told the judge that he didn't
24 bother to attend, is that correct?

25 A. I told the judge that he -- that my

1 understanding is, he informed the company it was not necessary
2 for him to attend. I didn't say he didn't bother.

3 Q. Okay. Isn't it true that Mr. Wirges did attend
4 the meeting at Fort Wayne and then decided based on -- could I
5 finish the question, sir?

6 A. Certainly.

7 Q. Isn't it true that Mr. Wirges was invited and
8 did attend the meeting at Fort Wayne and based on what
9 happened at the meeting at Fort Wayne, decided not to attend
10 the meeting at Marion?

11 A. Well, the Jones, Day attorney who took my
12 deposition represented to me that Danny Wirges was contacted
13 and informed the company his presence was not necessary at
14 either location, and I took his word for it, and at this
15 point, don't really care what happened. Because I don't think
16 it's relevant to anything we're doing today.

17 Q. Okay.

18 THE COURT: You do know that I'm the one that
19 makes rulings on relevance.

20 THE WITNESS: I've heard that, yes, your Honor.

21 Q. Did you ever ask Mr. Wirges around this time
22 period whether he was attending meetings with Dana without
23 your knowledge?

24 A. No.

25 Q. Any idea why he would do that without telling

1 you?

2 A. I was explaining that earlier when you objected.
3 Would you like me to go back to my explanation?

4 Q. You indicated he was planning to retire in the
5 near future?

6 A. He did retire and at that point was in
7 retirement mode, and it comes as no surprise to me that he
8 wasn't paying the strictest attention to reporting everything
9 that happened. I hope one day to be in that same position.

10 Q. Isn't it true, sir, there was a bit of a riff or
11 conflict between you and Mr. Wirges, who basically got
12 squeezed out when there was a merger between you and PACE?

13 A. That's a hundred percent not true. He
14 maintained exactly the same position that he had in PACE with
15 the USW.

16 Q. But then he went to meetings, didn't tell you
17 about them and then retired.

18 A. He was planning to retire. He has a bad back.
19 He was in a lot of pain.

20 Q. Sir, in your description of your experience in
21 dealing with the, proposing the progressive and innovative
22 contract initiatives, you made a reference to your extensive
23 work in the steel industry, and in particular, LTV, is that
24 correct?

25 A. Yes.

1 Q. Now --

2 A. LTV and ISG.

3 Q. Right. Right. Now, in LTV, the company, LTV,
4 made Section 1113 and 1114 proposals to the unions in that
5 case, is that correct?

6 A. During the bankruptcy case?

7 Q. Yes.

8 A. Yes, that is correct. I was not involved in
9 that.

10 Q. But the counsel, Bruce Simon, was; right?

11 MR. SIMON: He sure was.

12 A. You can ask him.

13 Q. You don't know?

14 A. Well, I do know, why are you asking me when he's
15 right there --

16 Q. Because you are on the stand, sir.

17 A. To -- that is hearsay, but I'll tell you the
18 hearsay. I was told he was there.

19 THE COURT: Please sit down, Mr. Simon.

20 Q. You gave a pretty long explanation on what
21 happened in LTV. Now I'm going to ask you about it, okay?
22 Your counsel was involved in that one, right?

23 A. Yes.

24 Q. And you were, right?

25 A. No.

1 Q. You just know about it.

2 A. Yes.

3 Q. Isn't it true, sir, that on the eve of the
4 Section 1113/1114 hearing in that case, the creditors'
5 committee and the USW began to attempt to negotiate a modified
6 labor agreement?

7 A. I've heard the story. I wasn't there.

8 Q. Isn't it true, sir, that's your understanding?

9 A. I've heard the story. I have no reason to
10 believe it isn't true.

11 Q. Okay. And that story that you've heard, isn't
12 it true that the USW and the creditors' committee, not the
13 debtor, but the creditors' committee in LTV came to an
14 agreement on the modified labor agreement, is that correct?

15 A. That's my understanding, yes.

16 Q. And isn't it true that that modified labor
17 agreement that the creditors' committee and the unions agreed
18 upon did not provide the level of savings that LTV was seeking
19 in the 1113 and 1114 proposals, correct?

20 A. Knowing the USW's bargaining strategy, I would
21 believe that to be true, but I have no knowledge of that.

22 Q. And then LTV did not successfully reorganize as
23 a result. They instead sold their assets, correct?

24 A. Oh, that's correct.

25 Q. All right. And they were bought by ISG?

1 A. Yes. The plants were bought.

2 Q. And ISG took the plants and the assets without
3 the retirement benefit liabilities, correct?

4 A. Correct.

5 Q. Those were left with LTV to satisfy with its
6 pre-petition assets, right?

7 A. I don't think that's an accurate statement of
8 the situation. The obligation was left with LTV. In the
9 negotiations with ISG, we created a trust funded by ISG
10 profits to provide healthcare to retirees from, ultimately,
11 Acme, LTV and Bethlehem.

12 Q. Sir, on paragraph 17 of your declaration in tab
13 A of the cross-examination binder, you make a reference to the
14 meeting that occurred in Pittsburgh on December 14th; is that
15 right?

16 A. Yes.

17 Q. Now, at that meeting, the only thing that really
18 happened is, the parties made a date to meet again a month
19 later to engage in formal negotiations; is that correct?

20 A. No, that's not correct.

21 Q. What else happened?

22 A. That did happen. The original purpose as I
23 understood it of the meeting was to share information; and
24 there was a long discussion of financial and operating
25 information. That part of the meeting was primarily a

1 teleconference. At the end, Rick Shaw, counsel for Dana, and
2 myself, began the process of making arrangements for a
3 meeting.

4 Q. At that December 14th meeting, the unions did
5 not take the opportunity to engage in any negotiation of the
6 debtor's Section 1113 proposals or 1114 proposals at that
7 time.

8 A. That was not the purpose of the meeting. No.

9 Q. January 17th was the date set for that, right?

10 A. We met in Toledo, and --

11 Q. On January 17th?

12 A. Yes.

13 Q. Okay. Now, that meeting that was scheduled for
14 January 16th, that was the meeting that was originally
15 scheduled for five days, correct?

16 A. It was -- it was scheduled for, yes, at least
17 five days.

18 Q. You had --

19 A. We set aside time, is a better way to put it
20 than "schedule."

21 Q. You had hotel reservations for five days,
22 correct?

23 A. Yes.

24 Q. It ended up only lasting two-and-a-half, three
25 days, correct?

1 A. That's correct.

2 Q. And at that meeting, that's when you made your
3 first proposal, which is tab H of your cross-examination
4 binder, Debtor's 280, is that correct?

5 A. It appears that way.

6 Q. Why did the meeting only last three days instead
7 of the anticipated five?

8 A. Because there wasn't any point meeting after the
9 point at which we broke up.

10 Q. Why not?

11 A. I don't think it's appropriate to discuss
12 bargaining strategy on the witness stand.

13 Q. Well, we've been talking --

14 THE COURT: You can answer that question without
15 discussing the strategy.

16 A. Well, we broke up for strategic reasons based on
17 our assessment of the bargaining situation. I don't think
18 it's appropriate for me to go into detail under oath about our
19 strategic thinking about the long-term bargaining.

20 Q. Well, you did testify under oath that it was
21 originally planned for five days, right?

22 A. Yes.

23 Q. And then --

24 A. I -- I actually, that's not right. I testified
25 that we set aside the time. I didn't say planned. I said we

1 set aside the time. I corrected your word, "Planned."

2 Q. So, I'm not going to ask you what your strategy
3 was, but it was terminated because of your strategy, is that
4 right?

5 A. It was terminated because we concluded that at
6 that point, we should terminate it.

7 Q. All right. Then, sir, if I could ask you to
8 turn to tab I, this is a Debtor's Exhibit 281.

9 A. Yes, sir.

10 Q. Is this the counterproposal that Dana submitted
11 to the unions with respect to 1114 whereby they proposed
12 creation of a VEBA?

13 A. Appears to be.

14 Q. Do you recall seeing this?

15 A. Yes, I received it.

16 Q. And you received this on or about January 26,
17 2007?

18 A. That sounds right.

19 Q. And the unions did not respond to this
20 counterproposal with a formal response?

21 A. A fair answer to that question is that we have
22 been engaged in negotiations with Dana over all subjects. We
23 have not given them a written formal counterproposal that we
24 could then introduce into evidence in this proceeding. But to
25 say that we have not responded to it is not fair.

1 Q. Have you submitted anything in writing to
2 Dana --

3 A. I just said we didn't --

4 Q. -- with respect to this proposal?

5 A. Well, again, we were not provided a formal
6 counterproposal that could be introduced in evidence.

7 Have we had discussions with the company over
8 the subject? Yes.

9 Q. Did you, I take it you rejected this proposal,
10 is that correct?

11 A. Well, we certainly haven't accepted it.

12 Q. Have you rejected it?

13 A. I don't know what that means. We haven't got an
14 agreement that we're going to do this.

15 Q. Have you told Dana that you're unwilling to
16 accept this proposal?

17 A. In a formal sense, probably. That's really not
18 how negotiations work. So -- we haven't been bargaining to
19 create a record for this proceeding. We've been bargaining to
20 try to reach an acceptable agreement. So I don't bargain in
21 terms like, "Reject," and keep that kind of --

22 Q. I'm going to ask you to turn to tab K. This is
23 Debtor's Exhibit 283.

24 A. Yes.

25 Q. Is this a letter that you sent to Mr. Bueter on

1 or about March 9th?

2 A. Yes.

3 Q. And this proposes -- March 9th, that was the
4 Friday before in Section 1113 hearing was scheduled to begin
5 on Monday, the following Monday, is that correct?

6 A. It sound right.

7 Q. So it's one business day before the trial was
8 supposed to start, right?

9 A. Sounds right.

10 Q. And in this letter, you're proposing to meet to
11 talk about something during the week of March 19th, March
12 20th, is that right?

13 A. That's correct.

14 Q. And then, if we turn to tab 11, this is the --

15 A. Tab?

16 Q. I'm sorry, tab L. Debtor's Exhibit 284, this is
17 the revised proposal that you gave to Dana on March 19th,
18 correct?

19 A. Yes.

20 Q. And the only difference, the only material
21 difference between this proposal and the one that you did on
22 January 17th is that it added the UAW?

23 A. In substance, that's correct.

24 Q. All right. So this proposal, and I know you
25 gave a little bit of preview of this to Mr. Levine's

1 questions, but the proposal that the unions made to Dana
2 doesn't address any wage reductions whatsoever with respect to
3 the unions at the plants, correct?

4 A. Well --

5 Q. You said yes to Mr. Levine. Are you going to
6 give me a long answer?

7 A. No, you used the word "address." And I'm not
8 going to -- I'm not going to ratify that word. Because we
9 think it provides a framework for a successful conclusion to
10 negotiations --

11 Q. I know you said that.

12 A. -- issues, so I'm not going to say yes to your
13 issue, it doesn't address. I will acknowledge the obvious
14 that it doesn't propose on its face wage concessions.

15 Q. Doesn't even discuss any wage concessions,
16 right?

17 A. It doesn't on its face propose wage concessions.

18 Q. All right. And it doesn't discuss on its face
19 anything with respect to pension plan modifications, correct?

20 A. Correct.

21 Q. And it doesn't discuss on its face anything with
22 respect to healthcare plan modifications, correct?

23 A. Correct.

24 Q. And it doesn't discuss on its face any changes
25 in workplace rules or labor rules, correct?

1 A. I -- I would probably quarrel with you, but it's
2 not directly, no.

3 Q. And I may not be using the correct terms. But
4 it doesn't address on its face any changes or proposed
5 modifications to retirement healthcare benefits, correct?

6 A. I already said correct.

7 Q. What it does do is, it asks to give additional
8 security to union workers to make it more difficult for Dana
9 to fire union workers, correct?

10 A. Well, I don't think -- you're using the word
11 "fire" --

12 Q. Terminate.

13 A. -- I think that's incorrect. I think
14 "terminate" is incorrect. It addresses, I think what you're
15 getting at is, it addresses job security issues, as well as
16 other things.

17 Q. Does the job security proposals in your
18 counterproposal, do they make it, if they were implemented,
19 more difficult for Dana to terminate union workers at these
20 plants?

21 A. Well, you're using terms of art and I don't want
22 to sit around and argue about how those terms are used in
23 collective bargaining agreements, because I don't think that's
24 what you're doing. It addresses the issue of job security,
25 which obviously means ongoing opportunity to work, for Dana

1 union-represented employees.

2 Q. Okay. You were sitting here yesterday during
3 the trial, is that correct?

4 A. No.

5 Q. Oh, you weren't here? So you didn't hear
6 Professor Wachter's testimony about something called an
7 efficiency wage theory that might be proposed by one of your
8 experts, Susan Helper?

9 A. I didn't hear it and it sounds like I'm glad I
10 didn't.

11 Q. You have no knowledge as to whether or not
12 increasing job security for union workers might be
13 inconsistent with the efficiency wage theory proposed by your
14 expert?

15 A. As I -- as I said, I've got no idea what the
16 efficiency wage theory is, so I can't answer the question.

17 Q. Neither do I. I can't wait to hear about the
18 cross-examination on that one today. We'll find out.

19 Now, isn't it true, sir, that at this March 19th
20 meeting, you told representatives of Dana, including Chris
21 Bueter and Mr. Shaw of Jones, Day, that it was your belief
22 that both sides' proposals being discussed at that meeting
23 were "ridiculous"?

24 A. My understanding of the -- we had a -- had two
25 discussions on the 19th. The first was a full discussion with

1 both full committees in the room. We proposed our proposal.
2 There was no proposal from the company, meaning that their
3 original 1113 proposal was still on the table from them. They
4 didn't counterpropose their own proposal.

5 We had a meeting following that consisting of
6 the top leadership from each side. And my understanding was
7 that that was an off-the-record discussion, and I prefer not
8 to discuss off-the-record discussions.

9 Q. Sir, isn't it true that Mr. Bueter testified
10 that you told him at that meeting that you had called both
11 proposals ridiculous?

12 A. I don't know what Mr. Bueter testified.

13 Q. You weren't here?

14 A. The only time I've been the in this courtroom is
15 this morning.

16 Q. Okay, fair enough. Then I was misinformed. I
17 apologize. You don't have any reason to dispute that what
18 Mr. Bueter testified is accurate, do you?

19 A. I didn't hear him testify, so I'm not going to
20 comment on his testimony.

21 Q. Well, he was commenting about what you said at
22 the March 19th meeting. You're the person that would refute
23 him if anybody's going to. Are you going to do it now?

24 A. And I'm going to say, I don't recall making a
25 serious statement that our proposal was ridiculous, and if

1 Mr. Bueter said that, he can say whatever he wants. I don't
2 discuss off-the-record conversations on the record. I will
3 say in response to your question, I don't remember ever saying
4 that, and I'm sure I never said it in a serious way, "This is
5 a ridiculous proposal."

6 Now, may I have had a joking comment with
7 somebody off the record? Of course that's possible.

8 Q. Now, the original Section 1113 proposals, with
9 all the wage reductions and pension plan modifications and
10 healthcare plan changes and work rule changes and retirement
11 benefit changes proposed by Dana, those were all made back in
12 early December to the union, right?

13 A. Sound right.

14 Q. All right. And those changes are seeking cost
15 savings for the debtor that will result in somewhere between
16 30 and 60 million bucks, right? Well, actually, 28 for these
17 five --

18 A. Well, 30 to 60 is the number that's being thrown
19 around.

20 Q. But for these five plants it's in the
21 neighborhood of thirty million or a little under, right?

22 A. Thirty to sixty is the number I've had heard
23 thrown around. You'd have to ask Leon --

24 Q. I'm sure Mr. Bennett will do that at some point.
25 My question is, that was early December. To this date, the

1 unions have not made any written counterproposal or formal
2 counterproposal to the debtors that results in cost savings to
3 the debtors that comes anywhere close to \$28 million or \$30
4 million, right?

5 A. I have no idea about the costing. I will tell
6 you, if what you're asking is, again, that we have not made a
7 written proposal for wage reductions, the answer is, that's
8 correct.

9 Q. At this point, the unions haven't made any
10 counterproposal to the debtors that would save the debtors
11 even a nickel on their labor costs to this point, correct?

12 A. Well, I am not going to concede that the
13 proposal we had will not result in labor cost savings.

14 Q. You haven't proposed any reductions in wages,
15 right?

16 A. That's correct.

17 Q. No reduction in benefits, right?

18 A. That's correct.

19 Q. No reduction in total compensation.

20 A. That's correct.

21 Q. Okay. So you haven't made any formal written
22 proposal that reduces Dana's total compensation for labor cost
23 by a nickel, right?

24 A. On a per-capita basis, that's correct. Now in
25 the steel industry --

1 Q. Sir --

2 A. -- you're asking me to characterize our proposal
3 and you're not giving me a fair chance to answer it --

4 THE COURT: Your attorney is going to have you
5 on redirect. Just answer the question.

6 Q. All right. It's now almost four months since
7 early December. Do the unions have any plans to make a formal
8 proposal to the debtors that will reduce the debtors's total
9 compensation costs for their union labor prior to the court's
10 ruling on this 1113/1114 motion?

11 A. As I explained to you earlier, I'm not going to
12 discuss a bargaining strategy on the witness stand.

13 Q. Well, you haven't done it today, right?

14 A. Once again, we have not proposed wage
15 reductions. I conceded that pretty early. We can say it a
16 lot of times. I'll keep agreeing with you.

17 MR. HAMILTON: I have no further questions, your
18 Honor.

19 MR. LEVINE: No questions, your Honor.

20 Thank you, Mr. Robinson.

21 (The witness is excused.)

22 MR. LEVINE: Your Honor, at this point, I'm
23 deferring to my partner, Mr. DeChiara.

24 MR. DeCHIARA: Your Honor, if we could have a
25 very short break, a few minutes before the next witness?

1 Thank you.

2 THE COURT: Five minutes.

3 (Recess taken.)

4 THE COURT: Okay.

5 MR. DeCHIARA: Thank you, your Honor, Peter
6 DeChiara, again, for the unions. Our next witness is
7 Dr. Paula Voos.

8 P A U L A V O O S , having been duly sworn, was examined
9 and testified as follows:

10 DIRECT EXAMINATION BY MR. DeCHIARA:

11 Q. Good afternoon, Dr. Voos.

12 A. Good afternoon.

13 Q. Can you tell us where you are currently
14 employed?

15 A. I'm a professor at Rutgers, the State University
16 of New Jersey.

17 Q. And what is your academic specialty?

18 A. I'm a labor economist who also specializes in
19 industrial relations.

20 Q. And for how many years have you been a labor
21 economist?

22 A. I graduated with my Ph.D. in economics from
23 Harvard University in 1982, whereupon I became an assistant
24 professor at the University of Wisconsin. I stayed there for
25 many years, eventually became a full professor of economics

1 and industrial relations. And then in 1998, I moved to New
2 Jersey and joined Rutgers.

3 Q. And what is your position in the department at
4 Rutgers?

5 A. I'm the elected chairperson of the department.

6 Q. Have you published in the field of labor
7 economics?

8 A. I have published extensively, both scholarly
9 reports and articles, and I have edited some books.

10 Q. I'd like to refer you to your expert report in
11 this case. It is marked as Union Exhibit 1.

12 MR. DeCHIARA: Your Honor, if I may approach the
13 witness and hand her a copy, and if I may hand you a copy as
14 well.

15 THE COURT: Don't I have it?

16 MR. DeCHIARA: You probably do. I just thought
17 for convenience I'll give you another.

18 THE COURT: Well, if convenience means you're
19 burying me behind a mountain of paper --

20 MR. DeCHIARA: Your Honor --

21 Q. -- Dr. Voos, attached to your report is what
22 appears to be your CV, do you see that?

23 A. Yes, I do.

24 Q. And is that a complete and accurate and
25 up-to-date version of your CV?

1 A. Yes, it is.

2 Q. And looking on your CV, pages 2 through, I guess
3 it's 2 through 9, there are a list of many publications. Is
4 that a listing of your publications in the field of labor
5 economics?

6 A. Yes, that is.

7 Q. Do any of those publications deal with the
8 subject of wage and benefit comparability?

9 A. Yes. Some do. And others use the same
10 methodology that we would use in addressing wage
11 comparability, even though that's not the primary subject of
12 the article.

13 THE COURT: Dr. Voos, what's the space after the
14 names of articles and chapters in books? Is that --

15 THE WITNESS: I'm glad you asked --

16 THE COURT: -- is that a substitute for your
17 name?

18 THE WITNESS: That's my name. That's an
19 academic style.

20 THE COURT: You give yourself a blank?

21 THE WITNESS: Right, to put a blank in. You
22 just put your name in the first one. It's just a style.

23 Q. Have you ever served as an expert in connection
24 with a legal proceeding?

25 A. Yes, I have.

1 Q. Can you tell us what those occasions were?

2 A. They are all listed on my CV. Most importantly,
3 and most recently, I was an expert in the Delphi bankruptcy
4 case for the UAW. I've also been an expert in several
5 arbitrations, including two for the National Association of
6 Letter Carriers in 1999 and 1995, earlier for a couple for
7 Madison Teachers, Inc., in Madison, Wisconsin.

8 MR. DeCHIARA: At this point, your Honor, I'd
9 like to move the qualification of Dr. Voos as an expert in the
10 field of labor economics.

11 MR. BENNETT: Two things, your Honor. One, as
12 with the limitations on Professor Wachter, I don't think this
13 expert is being proposed as an expert on the auto industry in
14 general, or the auto supply industry.

15 And the other one has to do with a discovery
16 point that we had raised earlier. I could voir dire on that
17 subject or simply cross on the subject to make a record and
18 the court can rule. My preference would be to do it as cross,
19 so that it's continuous.

20 THE COURT: We'll await the event.

21 MR. BENNETT: Thank you, your Honor.

22 THE COURT: She's accepted as an expert in labor
23 economics.

24 Q. Professor Voos, did you write your expert report
25 that's Union Exhibit 1?

1 A. Yes, I did.

2 Q. And I'm going to ask you if everything in it is
3 true and accurate, but before I do that, are there any
4 corrections you'd like to make in it?

5 A. I would like to make one important correction
6 that is, involves a rounding error. That correction is in
7 table 3 on, I believe, page 13 -- yes. If you look at the
8 right column of that table, and you go down three rows, you
9 will see a a figure of \$20.04 per hour. That should read
10 \$20.05 per hour. The number was 20.046, and it should be
11 rounded up to five.

12 Q. So it's a penny difference?

13 A. Correct.

14 Q. Apart from that correction, as far as you know,
15 is everything set forth in your expert report true and
16 correct?

17 A. To the best of my knowledge and belief.

18 MR. DeCHIARA: Your Honor, we would move the
19 admission of Union Exhibit 1.

20 MR. BENNETT: No objection.

21 THE COURT: Received.

22 (Union Exhibit 1, received in evidence, as of
23 this date.)

24 Q. Dr. Voos, in his declaration, Mr. Bueter states
25 that among the goals that Dana is seeking to achieve in the

1 pay cuts it's seeking in the five facilities that have been
2 discussed in this case, one of the goals is, "To bring the
3 average hourly wage cost in line with that being paid by other
4 companies in the same industry."

5 That's paragraph 17 of Mr. Bueter's declaration.
6 First let me ask you, what industry does Dana operate in?

7 A. The Bureau of Labor Statistics places it in the
8 motor vehicle parts industry. That's North American
9 industrial classification code -- let me be sure I have the
10 right number -- 3363.

11 Q. That's the BLS code for the auto parts industry?

12 A. That is correct.

13 Q. In preparation for your testimony here today,
14 did you do any analysis of Dana's wages in the five plants
15 that have been discussed, and I'm referring to Auburn Hills,
16 Fort Wayne, Lima, Marion and Pottstown, did you do any
17 analysis of Dana's wages at those plants in comparison to
18 wages paid generally in the auto parts industry?

19 A. Yes, I did, and I did that because those wages
20 in that industry are the important benchmark or reference
21 point for Dana's competitors who are also in that industry.

22 Q. And based on your analysis, do you have an
23 opinion about how Dana's current wages at these five
24 facilities compare to other companies in the motor vehicle
25 parts industry?

1 A. Yes --

2 MR. MORELAND: Your Honor, excuse me. Could I
3 object on behalf of the committee to testimony in relation to
4 the Lima and Pottstown plants on the grounds that it's
5 irrelevant to the motion before the court?

6 MR. DeCHIARA: Your Honor, I don't substantively
7 disagree that since the company has said that its Section 1113
8 proposal does not apply to the Pottstown and Lima plants, that
9 they may not be relevant. However, for purposes of this
10 examination, since this witness did prepare an analysis of
11 those five plants in response to, largely in response to what
12 Dr. Wachter did, and Dr. Wachter looked at those five plants,
13 I think it would just be more complete to allow her to present
14 her analysis and the court can obviously take note of the fact
15 that the Section 1113 proposal does not apply to those five
16 plants.

17 THE COURT: I understand that. It's taking
18 those, all five plants in juxtaposition each to the other that
19 forms a backdrop for the preparation of the report. I will
20 allow it. The objection is overruled.

21 Q. Let me ask the question again. Based on your
22 analysis, do you have an opinion about how Dana's current
23 wages at these five facilities compare to other companies in
24 the motor vehicle parts industry?

25 A. Yes, I do. And I look at these plants on an

1 individual basis as well as on a collective basis, so it is
2 easy to see the Lima and Pottstown plants and see the other
3 three plants.

4 Q. Okay. And what is, if you could just tell us
5 what your conclusion is, and then I'll ask you to walk us
6 through how to get there, what is your conclusion about how
7 the current wages at those five plants compare to the auto
8 parts industry?

9 A. Yes. Wages at these five plants, I have
10 concluded, currently are somewhat below the industry standard.

11 Q. Okay. And now that you've given us your
12 conclusion, if you could turn to your report and walk us
13 through how you reached that conclusion.

14 A. Yes, please. I would like to say that I started
15 by looking at the industry and its wages, and I used two
16 different publicly-available datasets from the Bureau of Labor
17 Statistics to do that.

18 If you turn to page 11, at the bottom you will
19 see table 2-A, and then at the top of page 12, you will see
20 table 2-B. Each table refers to a different dataset. My data
21 was taken from the website of the Bureau of Labor Statistics.
22 It is the most recent data available, and these are two
23 sources of data on this industry and on other industries in
24 the American economy.

25 The first set of data is from the quarterly

1 census of wages. It is for the second quarter of 2006. That
2 is a dataset that covers about 98 percent of all the employees
3 in the economy. It includes white collar workers as well as
4 blue collar workers, managers as well as production workers.
5 It's a very inclusive dataset. And it has data, of course,
6 also on government employees. But I looked only at the
7 private sector, and then the two parts of the private sector
8 is either the goods producing sector or the service sector,
9 and clearly Dana is in the goods-producing sector. And then
10 within the goods-producing sector it's in the motor vehicle
11 parts industry. So this data table is set up to show the
12 average weekly wages in these various industry groups of which
13 Dana is a part.

14 So the industry groups are going in the first
15 column down from most aggregate, the total product sector, to
16 quite an aggregate, intermediate category, the goods-producing
17 sector, and then the motor vehicle parts industry, Dana's
18 industry, at the bottom. And the first column shows the
19 average weekly wages in those three sectors and then you'll
20 notice that in motor vehicle parts at \$1,001 per week --

21 THE COURT: Rounded off.

22 THE WITNESS: Yes, that's rounded up to the
23 nearest dollar, correct --

24 A. -- that wage in that industry is above the
25 average in the goods-producing sector or in the total private

1 sector. And those comparisons are in the next two columns.
2 It's just for the convenience of everyone to see the degree to
3 which they are above.

4 And probably the most important number on the
5 table is the comparison to the goods-producing sector and
6 that's important because sometimes, one has to use data from
7 the goods-producing sector. One would always prefer to use
8 the most close match as possible in doing a kind of
9 benchmarking or comparability. One would like to use
10 industry, motor vehicle parts industry data, but when we can't
11 get it, we have to look at the closest thing possible. And
12 that's sometimes the goods-producing sector.

13 And so you see in the first right column at the
14 bottom of the table, that on average, weekly wages in the
15 motor vehicle parts industry are 11.6 percent above that in
16 the total goods producing sector.

17 Table 2-B is from a different dataset. It is
18 also from the Bureau of Labor Statistics. It's for December
19 2006. And it is, in some ways, really quite relevant because
20 it pertains only to production and non-supervisory workers,
21 and that is, you know, one might say in a vernacular way, blue
22 collar, the people who are paid on an hourly basis, and
23 clearly, all the union workers in the Dana facilities in
24 question would be in this category of production and
25 non-supervisory workers. That would include skilled

1 employees, it would include production employees, it would
2 include support employees.

3 And again, we have the three industry groups and
4 then the first column shows the average hourly earnings in the
5 total product, the goods-producing and the motor vehicle parts
6 industry, and you'll notice in motor vehicle parts, the
7 average as of last December is \$22.11 per hour, and you might
8 want to kind of mentally circle that number in your mind,
9 because it is a particularly relevant number for the five
10 facilities in question, and is a number that is a really clear
11 industry benchmark.

12 The next two columns, again, show the percentage
13 differential with the total private sector or the
14 goods-producing sector and the number on the far right bottom
15 row shows that, you know, looking at this dataset, at the
16 production and non-supervisory workers only, on average, their
17 pay, their average hourly earnings is 20.3 percent above that,
18 in the goods producing sector.

19 So clearly, motor vehicle parts is not a
20 low-wage industry. That is one factor, but only one factor
21 that we would look at in comparability analysis. Typically
22 we'd look at a variety of factors. And table 3 on page 13
23 introduces a second consideration, and one that has been found
24 to be very, very important in terms of wages. And that is the
25 issue of employer size.

1 Q. Establishment size?

2 A. Well, actually, this table is about
3 establishment size, but I'd like to note at this point that
4 there really are two dimensions to employer size. One is the
5 size of the total corporation, and Dana is a substantial
6 corporation in terms of its, you know, entire work force. And
7 that factor will be dealt with later in the paper.

8 This is about establishment size, the size of an
9 individual facility or plant or location. And so we have data
10 on establishment size. Both have been found to be important
11 dimensions in wage comparisons. And establishment size,
12 you'll notice again, BLS data from the quarterly census of
13 wages, this is, the first quarter of 2006 was the latest
14 available, you see some establishment size categories created
15 by the bureau. And they go down from 50 to 99, that's a small
16 size category, up to, at the bottom of the table, one thousand
17 or more employees in an individual plant or facility.

18 The second column shows weekly earnings in all
19 the goods-producing sector in these different size
20 establishments. And you'll notice just looking down the
21 columns what a marked impact establishment size has on
22 earnings. And small facilities at the top there, we have 881.
23 By the time you're down to really large facilities, one
24 thousand or more, you're at \$1,544 per week. So establishment
25 size is clearly very important.

1 Dana's facilities that we're looking at, these
2 five facilities, are all actually kind of in the middle of
3 this table. They are moderately large. They are not huge.
4 Four of the five facilities are most likely now in the 250 to
5 499 category. I judged the size category by looking at the
6 number of union employees mentioned in Professor Wachter's
7 report. I did not know the number of non-union employees. So
8 if I erred, I erred on the side of choosing too small a
9 category. I was conservative.

10 In one facility, Auburn Hills, the number of
11 union employees is only 194, so that facility may be in the
12 one hundred to 249 category. And again, that's being
13 conservative.

14 So the numbers that are most important here in
15 the table are the ones that are in those rows and those are
16 the ones that matter. And we'll -- let me explain the other
17 columns and what one needs to do to use these numbers in a way
18 that gives us a good benchmark for the Dana employees in
19 question.

20 The next column takes the weekly earnings
21 figures and changes them to hourly earnings figures, hourly
22 wage figures, by dividing by the standard work week of 40
23 hours. So that's just simply the numbers in the first column
24 divided by forty. The final column adjusts for the fact that
25 this is data on all employees, and not just on production and

1 non-supervisory employees, the work group in question. And to
2 make it more applicable to the blue collar employees, I used
3 the economy-wide average of the ratio between pay to the
4 production and non-supervisory category, to all employees.
5 And the production and non-supervisory category has a little
6 lower earnings on average because they don't include
7 high-level managers, supervisors and so on. And that ratio is
8 about 78 percent.

9 So the final column is an estimated average for
10 hourly wages for production workers in the goods-producing
11 sector for different size establishments. And you will see,
12 now that it's been corrected, that in the one hundred to 249
13 category, that is \$18.46 per hour, and in the 250 to 499,
14 \$20.04 per hour.

15 Table 4 does two things. It allows us to look
16 at industry wages in comparison to the average wage for all
17 union-represented employees in these plants, and it also
18 allows us to look at the benchmark wage for similarly-sized
19 facilities in the same industry, as it takes into account two
20 factors. And to do it, it's a little bit complicated, so let
21 me try to walk you through it. If there are any questions,
22 please let me know.

23 We have the five facilities in question on the
24 left column, and then I took information from Professor
25 Wachter's report on the current wages for various categories

1 of union-represented employees. And those categories are the
2 average for all skilled trades in each facility, first column;
3 second column, for the current tier 1 production and support
4 employees. And tier 2 is the next column, for those two
5 facilities where there currently is a tier 2 agreement. All
6 right?

7 So those are the wages for each group at
8 present. And then, in order to find out the current average
9 wage for all union-represented employees at each facility, I
10 did a weighted average using information on the number of
11 workers in each category, and that's the same type of average
12 Professor Wachter uses. It's an accurate type of average used
13 by economists to arrive at the current average wage for all
14 union-represented workers in each facility.

15 And that column, even though it's the fourth
16 column over and kind of of buried in the table, is a very
17 important column, and let me just pause for a minute and
18 explain why it's important.

19 In much of Professor Wachter's analysis, he
20 focuses on only on tier 1 production and support employees and
21 ignores all the other employees. And this is the actual
22 average wage at each and every one of these facilities, and
23 one thing you can do in your mind is simply go back and
24 compare that wage to the wage that I suggested we all mentally
25 circle in table 2-B.

1 So go back to table 2-B, if you can --

2 Q. It's on page 12?

3 A. -- page 12. And you know, on page 2-B, in the
4 motor vehicle parts industry, the average hourly earnings is
5 22.11. Compare that to this wage, the average wage for all
6 union workers in each and every one of these five facilities
7 and you will notice that Fort Wayne Indiana, at 22.12, is one
8 penny more than the current average wage in the industry.
9 Just about at average. And all other facilities, all of these
10 other four facilities are below the current average industry
11 wage. So that's why I would say that current Dana wages are
12 somewhat below average.

13 That is just looking at industry. But we need
14 to combine that with information on establishment size,
15 because establishment size is also important. And that's what
16 is done in the next two columns.

17 The next column, "Comparison wage for the
18 goods-producing sector," is a column that is simply taken from
19 table 3. It's for your convenience to have it on the same
20 page. And for each one of the facilities I looked at, the
21 wage in the goods-producing sector for blue collar or
22 production non-supervisory employees as calculated in table 3,
23 and you'll notice that's \$20.05 for four of the five
24 facilities, and 18.46 for the one that's smallest. Okay.

25 So then just comparing those two columns gives

1 us some information, but obviously, that's for the
2 goods-producing sector, not for the motor vehicle industry.
3 So what's really important is to have some idea of how the
4 wages for Dana employees compare to employees in the motor
5 vehicle industry. And that's what we do in the final column.

6 How do I derive the figures in that column?
7 Well, being a conservative person, I wanted to be
8 conservative, so I went back to table 2-A and said, "Well, the
9 differential between motor vehicles and the goods-producing
10 sector is at least 111.6 percent." It might be 120.3. That's
11 2.3. But I just used 111.6, the smaller of the two measures
12 of the differential, and the motor vehicle parts sector
13 benchmarks or comparison wages are just 111.6 percent of my
14 estimates of the motor -- of the goods-producing sector. So
15 that's the final column.

16 As a double-check, I'd like you to notice one
17 thing. I understand we've been through several steps in
18 getting to that estimate. Remember that the direct measure by
19 the BLS, table 2-B, of wages in the motor vehicle parts
20 industry was \$22.11. If you look at the figures in my final
21 column that come through a series of estimating steps, a
22 different data source, you'll notice 22.38, you know, just a
23 little above 22.11. Or 20.60, just a little below 22.11,
24 okay?

25 So I think that these estimates are quite

1 reasonable. They take into account both establishment size
2 and industry, but they correspond to a wholly different
3 dataset that has direct measures of motor vehicle parts wages.
4 So they are pretty reasonable and they do show the impact of
5 both industry and establishment size.

6 Q. And if you could just point out to us which
7 column should we look at to compare the current average wage
8 for the union workers at the five plants to your estimate of
9 what the benchmark wage is?

10 A. Well, that would be the third column from the
11 right, "Current average wage for all union workers." Let's go
12 ahead and do a --

13 Q. All union workers at the five facilities.

14 A. At each of the five facilities. It's facility
15 by facility, to the comparison wage which is the column on the
16 right. So you will see for Pottstown, the current average for
17 the union-represented employees is \$20.91 per hour, and the
18 comparison wage for a motor vehicle parts facility of
19 approximately the same size as Pottstown is 22.38. So you can
20 compare those two columns. I'm sorry they are not next to one
21 another. That would have made it a little more convenient,
22 but it's pretty clear that for each and every comparison, in
23 all five facilities, the current wage is below this benchmark.

24 Q. Did you do an analysis of what the wages at the
25 five plants would look like compared to the benchmark after

1 implementation of the Section 1113 facility?

2 A. Yes, I did.

3 Q. Can you show us where that is in your report.

4 A. Please turn to the next table. That's table 5.

5 And let me explain what this shows before I try to go through
6 all the detailed calculations.

7 Dana's proposal includes immediate wage
8 reductions for current skilled workers, current tier 1
9 workers, and it also includes a much lower starting rate for
10 new tier 2 workers at \$11.05 an hour.

11 So any, you know, estimation of the impact has
12 to make some assumptions about how many of these new people,
13 new tier 2 people are hired. And so this is a snapshot. This
14 is the morning after those pay reductions go into effect, and
15 I'm assuming that no new tier 2 employees have been hired at
16 11.05 an hour for the purposes of this table. This is just
17 the immediate effect on the current employees.

18 I also assumed that there were the same number
19 of employees in each of the categories so that the weighted
20 average wasn't any different, right? So it just is the effect
21 of the pay changes alone and no change in mix. And the
22 figures in the first three columns for each of the facilities
23 were again taken from Professor Wachter's report on what Dana
24 is proposing to pay to these current employees.

25 And again, I have, in column 4, the column 4,

1 the numerical column 4 is, headed, "Proposed average wage for
2 all union workers," facility by facility in each of these five
3 plants.

4 The next column, "Comparison wage, motor vehicle
5 parts sector," is the number that is from table 4, right-hand
6 column. It is a number that includes, remember, both
7 industry, motor vehicle parts, and establishment size. And
8 you can just compare the proposed wage with the benchmark.
9 The final column shows the percent difference. And it seems
10 clear to me that Dana is proposing to lower pay substantially
11 below the industry average in a similar facility; anywhere
12 from 22 percent below in Fort Wayne, Indiana, to 27 percent
13 below in Marion, Ohio. Their proposals, even ignoring the new
14 tier 2, are really ones that would make it quite a low-wage
15 competitor within the industry.

16 Q. You said that table 5 gives us a snapshot of the
17 morning after the 1113 proposals are implemented. How would
18 this last column, the percentage differences, those double
19 digit negative numbers, how would those change with the
20 passage of time as new tier 2 employees were brought in at
21 11.05 an hour and as perhaps incumbent employees left?

22 A. The percent differences would get larger and
23 more negative. Because the new employees would have an
24 average wage that is substantially below these figures.

25 Q. In your opinion, what effect would paying below

1 market wages have on the work force that Dana can attract or
2 retain at these five facilities?

3 A. Labor economists find that there is some range
4 of wages in a labor market for particular types of workers,
5 and presumably that range of wages exists because there are
6 some differences in the qualification and skills of employees
7 that, you know, were not able to take into account in our
8 standard dataset.

9 But when employers are hiring, clearly, the
10 employers who are paying the best wages have their pick of
11 many, many employees and good, high quality employees can take
12 those jobs. And the employers who are trying to compete in
13 that labor market and are paying substantially below the
14 average have to take what's left. They have to take less
15 qualified, less skilled employees, employees with, you know,
16 interrupted work careers or employees that have had problems
17 getting better jobs.

18 Q. And what effect would that have on the
19 productivity of Dana's plants?

20 A. Typically, labor economists believe that pay is
21 strongly related to skill, and less skilled, less dedicated,
22 less motivated employees, employees who don't have the ability
23 to solve problems or to remain error-free in doing their work,
24 are less productive. They have a higher defect rate, higher
25 problems all around.

1 Q. In your opinion, if some of the incumbent
2 workers left these plants as a result of or after the
3 implementation of the Section 1113 proposals, which types of
4 workers are most likely to leave?

5 A. Again, workers who have better opportunities
6 with other employers are most likely to leave, and those tend
7 to be the best quality employees who are able to get better
8 jobs. They also tend to be younger employees. Older
9 employees may stick with it a few more years in order to
10 retire at the same place. It's harder for them and their
11 families to be mobile. But that's one of the problems
12 employers find when they reduce wages, is that they often lose
13 the people they don't want to lose.

14 Q. And what effect, in your view, would there be on
15 the incumbent employees who stayed?

16 (Continued on following page.)

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1 A. My experience and knowledge as a labor economist
2 is that academic studies have demonstrated that there are
3 consequences to pay cuts, especially substantial pay cuts that
4 lead to reduced morale, reduced efficiency, and often some
5 unwanted consequences to the employer. It's hard to predict
6 precisely how serious those will be. Hard to put a number on
7 it. But, yes, there are certainly many stores abound.

8 Q. Professor Wachter on --

9 THE COURT: If you're going to go into another
10 subject area, we'll break for lunch.

11 MR. DeCHIARA: That's fine, your Honor.

12 THE COURT: We'll break for lunch.

13 MR. DeCHIARA: 2 o'clock?

14 THE COURT: Yes.

15 (Luncheon recess: 12:55 p.m.)
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1 A F T E R N O O N S E S S I O N

2 (2:04 p.m.)

3 P A U L A V O O S , having been previously sworn,
4 resumed the stand and testified further as
5 follows:

6 DIRECT EXAMINATION BY MR. DeCHIARA (Cont'd.)

7 Q. Mr. Voos, before we broke for lunch, we were
8 discussing primarily your analysis of wages.

9 A. Correct.

10 Q. As opposed to wages and total compensation. Let
11 me begin by asking you, in terms of the ability to attract and
12 retain a skilled and motivated work force, can a company look
13 solely at total compensation or does it also need to look
14 separately at wages?

15 A. An employer needs to look both at wages and at
16 total compensation, and the reason is that employees look at
17 both. All of us need to, you know, buy gasoline, go to the
18 grocery store, pay rent, pay the mortgage. So we're concerned
19 with wages, and we're also concerned with total compensation.
20 We're concerned with our health insurance, pensions and so on.

21 But they are not entirely separatable, and
22 clearly employees care about both. So employers have to
23 analyze both.

24 Q. Do you have an estimate of the total
25 compensation, wages plus benefits, of production workers in

1 the motor vehicle parts industry?

2 A. Yes, I do.

3 Q. Can you refer us to your expert report and
4 explain to us how you arrived at that estimate.

5 A. Yes. And let me say first of all, the reason I
6 do create an estimate of total compensation in motor vehicle
7 parts is that the Bureau of Labor Statistics does not simply
8 present that data. I wish they had. They have data for the
9 entire goods-producing sector, so I have to use that data, and
10 then use a reasonable information on differentials between two
11 industry aggregations to get to a more precise estimate
12 applicable to motor vehicle parts.

13 To do that, why don't we look at table 6.

14 Q. It's on page 16?

15 A. On page 16, yes. This is the dataset, the
16 employer cost of employee compensation that is also used by
17 Professor Wachter, from the Bureau of Labor Statistics. This
18 was the latest data that was available. It's for the third
19 quarter of 2006, and this table is set up a little
20 differently. The number of employees in establishments of
21 different size categories in the goods-producing sector,
22 you'll notice that's across the top, and these are categories
23 created by the BLS. So one to 49 is the smallest size
24 establishment in their categorization scheme, and five
25 hundred-plus is the largest size for this particular type of

1 data.

2 Clearly, in all the five facilities that we're
3 talking about at the present time, not perhaps in the past
4 when they were larger but at the present time, the Dana
5 facilities would be in this one hundred to 499 category.
6 That's obviously an agglomeration of two categories that we
7 were looking at earlier, but that's the way this total
8 compensation data is released to the public.

9 Total compensation is in the first line, and
10 that, of course, includes the cost of various fringe benefits,
11 both legally required and not legally required, and wages and
12 salaries. And you'll see the total compensation on average in
13 the goods-producing industry in the one hundred to 499
14 category is \$29.34, and you can also see the breakdown between
15 the wages and benefits.

16 To arrive at an estimate of the total
17 compensation in motor vehicle parts, I do the same steps that
18 I did before, though they are not separate tables. That is, I
19 recognize first of all that this applies to all employees. It
20 does not apply specifically to production and non-supervisory
21 employees, the group of employees that the union represents at
22 Dana. And so we have to recognize the difference between
23 that, and to do that, I have information on the relationship,
24 economy-wide, between the production occupations and all
25 occupations. And that information is in table 7. And it is

1 also from the employer cost of employee compensation.

2 And you'll notice economy-wide production
3 occupations, 22.62; all occupations, economy-wide, total
4 compensation, I'm reading across the first line, 25.52, and so
5 the first number is 89 percent of the other number.
6 Production occupations come in somewhat lower as before, 89
7 percent.

8 So in order to get at the compensation benchmark
9 in the goods-producing industries for the employees
10 occupational group in question, the blue collar workers, I
11 just take 89 percent of the figure in table 6 in that second
12 column to the right, that 29.34 figure, 89 percent of that is
13 \$22.62, and that number is in paragraph 35 that is below the
14 table.

15 Again, that is for the goods-producing sector,
16 and we need to recognize in fact that the motor vehicle parts
17 industry is a more highly compensated sector, and so I refer
18 again to table 2-A and 2-B. Those were the estimates of how
19 different motor vehicles was in comparison to goods-producing,
20 and we saw in those tables that total compensation in motor
21 vehicles was something like 111.6, 2-A; or 123.3 percent, 2-B,
22 of the figures for the goods-producing industry as a whole.
23 And when I do that, I conclude that a reasonable estimate of
24 total compensation in the motor vehicle parts industry for
25 establishments that are the size of the establishments we're

1 talking about are between \$29.14 an hour, and \$31.41 an hour,
2 and that conclusion is at the end of paragraph 36 on page 17.

3 Q. And how does that estimate compare to the total
4 current compensation of Dana employees?

5 A. Mr. Chris Bueter said in his declaration on page
6 12 that the average wage and fringe costs for Dana employees,
7 corporation-wide, was \$30.46 an hour in 2005. A value that's
8 in that range, it's in the middle of that estimated range.

9 Q. So that the current total compensation of the
10 Dana employees is within the range of what you say is the
11 benchmark for the industry.

12 A. Corporation-wide, yes. So I would conclude that
13 their total compensation at the present time is just about
14 average for the industry.

15 Q. Let me now direct your attention to Union
16 Exhibit 58. Do you have a copy of that?

17 A. I'm not sure where that's located, can you --

18 Q. Let me --

19 MR. DeCHIARA: -- your Honor, this is a new
20 exhibit. I gave your clerk two copies. You should have one.
21 And the company, I believe, has...

22 (Handing document to witness.)

23 Q. And I'm also going to be referring to Exhibit 59
24 in a minute, as well. But let's first talk about Exhibit 58.
25 It says, table 8. If you could first tell us, who created

1 this document?

2 A. I created it.

3 Q. And when did you create it?

4 A. I created it this past weekend after looking at
5 Debtor's Exhibit 55.

6 Q. And can you tell us what table 8 shows us?

7 A. Table 8, again, lists the five facilities and it
8 shows us how the proposed value of total compensation,
9 according to Dana, compares to this benchmark that I have
10 created for the total compensation in the motor vehicle parts
11 industry for similarly-sized establishments.

12 I took, in Professor Wachter's original report,
13 there was no estimate of the total cost of the proposed
14 compensation. He submitted that later. And I --

15 Q. You mean after the implementation of 1113?

16 A. Yes, after the implementation of 1113. In his
17 original report he did not analyze this. But then Debtor's
18 Exhibit 55 listed the five facilities, what they proposed for
19 each one in terms of pay and in terms of benefits and hence,
20 total compensation. And I took their figures. Those figures
21 are in the first column of this table. I can't really vouch
22 for their accuracy and indeed, I'm not sure if they -- I heard
23 this morning Professor Wachter say that they only pertained to
24 union-represented employees. I did not know, for example, if
25 they include current tier 2 employees or if they are just tier

1 1. But in any event, these are the companies's figures on
2 total compensation and for comparison, I just took the
3 midpoint of that estimated rage for the industry. The
4 midpoint of that estimated range is \$30.27, and you will see
5 in the third column how their proposed total compensation
6 compares and, in Pottstown, it's just about the same, just,
7 you know, and in Auburn Hills, it's 12.3 percent below and so
8 on.

9 Q. Well, let's just for a moment look at the three
10 of those plants where the 1113 is supposed to, or would apply,
11 Auburn Hills, Marion and Fort Wayne. Just, what's the
12 percentage difference between the proposed total compensation
13 and the market?

14 A. In each of those cases, the proposed
15 compensation is lower than the benchmark for a similarly-sized
16 facility in the motor vehicle parts industry. In Auburn
17 Hills, it's 12.3 percent below. In Marion, it's 9.5 percent
18 below, and in Fort Wayne, it's 4.1 percent below.

19 Q. Okay. Let me draw your attention back to the
20 proposed total compensation column; do you see that?

21 A. Yes, I do.

22 Q. Now, when we were talking about your table
23 regarding the proposed wages after implementation of the 1113,
24 you had indicated that that was a snapshot, sort of a morning
25 after the implementation. Does that same concept apply here?

1 A. Yes, it does. This table does not assume that
2 the company has hired any new tier 2 employees yet. This is
3 just for the current employees immediately after
4 implementation.

5 Q. And how would those numbers in the last column
6 change after certain incumbent employees leave and no hires
7 are hired?

8 A. As new employees are hired at a lower level of
9 total compensation, those numbers would get larger and more
10 negative.

11 Q. Let me now refer you to Exhibit 59, which is the
12 one that says, "Table 9." And -- I'm sorry.

13 (Handing document to witness.)

14 Q. Did you create this document?

15 A. Yes, I did.

16 Q. And did you also create this in the last couple
17 of days?

18 A. Yes, I did.

19 Q. And can you tell us what this shows us.

20 A. Well, as I said, Debtor's Exhibit --

21 THE COURT: Could you show us exactly what you
22 just testified to, the increase in the percentage numbers?

23 THE WITNESS: That is correct. And again, it
24 was taken from the Debtor's Exhibit 55, and I just took the
25 value of benefits for each facility and added that to 11.05 an

1 hour to arrive at the numbers the first column, proposed tier
2 2 numbers, and then as you said, shows the conclusion.

3 Q. This is the conclusion of what the tier 2, the
4 new tier 2 employees' total compensation would be.

5 A. That is correct. And you'll see that in all
6 three of those facilities, they are very substantially below
7 the total compensation that is a reasonable benchmark for the
8 industry.

9 MR. DeCHIARA: Your Honor, we move the admission
10 of Union Exhibits 58 and 59.

11 MR. BENNETT: Your Honor, just for the record,
12 these were given to us this morning, just before the hearing
13 started. I'm well aware that the court's ruling is that this
14 is a fluid situation. The fact, however, is that Professor
15 Wachter could have had an opportunity to look at this since
16 they were created over the weekend. He could have had an
17 opportunity to look at this. He could have had an opportunity
18 to respond to it. He's now on a train back to Philadelphia.

19 I'm not going to object to it. She's already
20 testified about it. But you should certainly understand that
21 it hasn't been vetted in that way.

22 THE COURT: It's received.

23 MR. DeCHIARA: Thank you, your Honor.

24 THE COURT: Or they are received.

25 MR. DeCHIARA: Thank you, your Honor.

1 (Union Exhibit 58, received in evidence, as of
2 this date.)

3 (Union Exhibit 59, received in evidence, as of
4 this date.)

5 Q. As long as we're talking about Professor
6 Wachter, let me move to the next topic. Professor Wachter
7 measures -- have you read Dr. Wachter's expert report?

8 A. Yes, I have.

9 Q. And he measures the market level of Dana's
10 current wages by looking at the average pay for certain BLS
11 occupational categories across the entire U.S. private sector
12 economy, is that your understanding?

13 A. That is correct.

14 Q. Do you believe that is the proper way to
15 determine the market wage of Dana's employees?

16 A. No, I do not.

17 Q. Can you explain why?

18 A. It has various problems. For one thing, it is
19 nationwide. For another thing, it is focused solely on
20 occupation. It ignores other elements that determine wages
21 besides occupation, including, industry and employer size are
22 things I've focused on here, but there are other things as
23 well that determine compensation. And it is not even a very
24 careful or precise analysis of occupation.

25 Q. Okay. And we'll discuss each of those in turn.

1 But let me first ask you if you can give us an example of a
2 comparability situation that you've been involved in and
3 explain how comparability was performed.

4 A. Comparability has been used in interest
5 arbitration; that is, arbitration that sets the terms and
6 conditions of new contracts in parts of the public sector.

7 And for example, in Wisconsin, where I worked
8 for many years, when there is an impasse in the public sector,
9 public sector employees are not allowed to strike. Instead,
10 they may take their claims to interest arbitration. Or in the
11 State of New Jersey, police and fire, other public safety
12 employees may take their claims to interest arbitration.

13 It is rarely, very rarely used in the private
14 sector. In the public sector, of course, we have public
15 information about wages and benefits that are paid to
16 employees. We're not concerned with keeping that secret from
17 the competition. So typically the standard, the gold standard
18 that would be used in arbitration is to make as exact a match
19 as possible, that is, to take into account all the different
20 pay-setting elements that have been identified by labor
21 economists in research to effect a pay, and to choose a
22 comparison group that is as close as possible.

23 So an example would be that, when I consulted
24 with Madison Teachers in the 1880s, 1890s, in --

25 Q. 1880s?

1 A. I'm sorry, 19 -- yeah, I'm older than I look.
2 The 1980s and 1990s, on pay, the standard that had evolved in
3 Wisconsin arbitration, and there were a number of things by
4 the way in the statute or the law that arbitrators were
5 directed to look at but one of them was comparable pay. The
6 standard that had had evolved was to look at pay in the -- for
7 teachers in the same athletic conference. And athletic
8 conferences are set up in Wisconsin, as in many states, to
9 recognize the size of the school district. And school
10 districts that are larger in fact have higher pay. And they
11 are also set up to be in approximately the same part of the
12 state. And in Wisconsin, pay is higher in the southern and
13 more urban parts of the state than it is in the north.

14 So both the school district and Madison Teachers
15 stipulated the pay rates in the various districts in that same
16 athletic conference, and of course that's the same industry,
17 that public education, not private schools, it's the same
18 occupation, teachers, you know, not principals, and it's in
19 the same location and the same size of the employer.

20 Q. In doing a comparability analysis, why would one
21 want to limit the comparison group by those various types of
22 factors that you mentioned?

23 A. Because economists have found that various
24 factors affect pay. And once one limits those factors, one
25 has a group that is -- is -- should have similar pay.

1 Q. In doing a comparability study, if one is
2 looking at other firms in the same industry, to what extent
3 would one want to only look at firms that are financially
4 successful?

5 A. Typically, one would look at all firms, and I
6 notice Professor Wachter looked at all firms when he looked at
7 occupation. He didn't look at just financially successful
8 firms.

9 Q. Let's now talk about factors that might be
10 relevant to determining the market wage for Dana's employees.
11 We've already discussed industry and establishment size. Tell
12 us a little bit about the relevance of firm size.

13 A. Firm size is also important. It has been the
14 subject of numerous studies by economists, sometimes carefully
15 separating it out from establishment size, sometimes
16 confounding the two, but of course the best studies have both.
17 And they have typically adopted regression methodology that
18 controls for many factors at once.

19 The studies were reviewed by the person who
20 assisted me in this report, Professor Dale Belman, and Erica
21 Groshen of the New York Federal Reserve, and we refer to their
22 paper, which is a study of studies in the relevant footnote,
23 and they found --

24 Q. What do you mean "a study of studies"?

25 A. I mean that it is a survey of other studies, and

1 they list the various studies and what was found in each study
2 in their report. So it is an overview, and they find that
3 virtually all studies show that employer size and employer
4 corporate size as a whole, holding constant for establishment
5 size, has been an important influence both on wages and on
6 total compensation.

7 Q. And your correlation is in what direction?

8 A. Larger firms pay more.

9 Q. And is Dana a large firm?

10 A. Well, obviously yes, because the cutoff that has
11 been used in most of the published research is one thousand or
12 more. Some studies have used five thousand or more, and under
13 either of those categories, Dana would clearly be a large
14 employer.

15 Q. Okay. Let's now talk about the relevance of
16 geographical location. What is the relevance, if any?

17 A. We all know that pay differs in different
18 locations of the United States. We're sitting here in
19 Manhattan now. All you have to think about is the comparison
20 to south Jersey. Pay differs even for the same occupation,
21 occupation of being a lawyer or the occupation of being a
22 lathe operator. There are well-established metropolitan and
23 regional differences in pay. They change slowly over time.
24 But they are a fact of life.

25 Q. And if I can refer you to table 1 on page 7 of

1 your report, if you can tell us what that shows us and what
2 the relevance of that is.

3 A. Table 1 on page 7 was the first thing that I
4 did. And I did it in response to a statement by Mr. Chris
5 Bueter. He pointed out in his declaration that Dana had
6 historically had a wage policy in which it set pay in
7 different facilities by looking at the local labor market, and
8 had separate negotiations with separate unions and union
9 plants, or had separate pay setting in the non-union plants,
10 and now was trying to move to change that historic pattern by
11 reducing pay in these five facilities that were relatively
12 high in his estimation.

13 So they were moving from a local pay-setting
14 procedure to a more national procedure. So my first thought
15 was, is that correct, is it true that these five facilities
16 are located in areas of relatively high pay for blue collar
17 workers? And so I just looked at the BLS website, again, this
18 is the quarterly census of wages. This was the most recent
19 data. It was for 2005. I really don't know why they only had
20 2005 in this data, but it was data county by county. It was
21 for the goods-producing sector, not motor vehicle parts, but
22 clearly, for that larger industry group that motor vehicle
23 parts is contained in. And these are the five counties in
24 each of these -- for each of these facilities and also we see
25 the U.S. average down at the bottom of the table. And I note

1 that each and every one of these five plants was located in an
2 area in which wages were at least average for the United
3 States, and in some cases, substantially above average.

4 So Oakland, Michigan, where the Auburn Hills
5 plant is located, has average weekly pay of \$1,154 per week.

6 Q. If you had factored in location in determining
7 your estimate of the work wage for the Dana employees, how
8 would the market wage have been affected, directionally?

9 A. It would have been higher than my figures that
10 just include establishment size and industry.

11 Q. Let me now ask you, within a given BLS
12 occupational category, such as the ones Dr. Wachter used, like
13 assembler, are there differences within a given BLS
14 occupational category of pay?

15 A. There are very substantial differences, and
16 they, because this data is often used by employers for
17 pay-setting purposes, the BLS carefully collects and releases
18 data on what it calls the work level within particular
19 occupations. And work levels are determined by the skill
20 requirements of jobs.

21 So for example, for an assembler, which is a
22 very large industrial classification, at the lowest work
23 level, the least skilled assemblers in the United States, I'm
24 referring to my paragraph 20 on page 9, are 9.50 an hour and
25 at the very highest level of skill in the assembler category,

1 folks earn \$21.76 an hour.

2 These work levels have descriptions with a --
3 attached to them by the BLS that indicates the amount of skill
4 that is required. And an employer's human resource management
5 department should take its own knowledge of the work that is
6 being done by its assemblers and find the work level in the
7 BLS data and then use that as the benchmark or the comparison.

8 Q. If Dana's employees that are subject to the
9 Section 1113 proposal had an above-average work level within
10 whatever BLS occupational group they would fall, how would
11 that directionally change your estimate of their market wage?

12 A. I'm not sure that I can answer that question. I
13 think --

14 Q. Assuming that they had an above-average work
15 level.

16 A. Let me see if I can explain and perhaps --
17 Professor Wachter assumed they were average. I made no
18 assumptions about whether they were above average or whether
19 they were average or whether they were the below average. If
20 in fact they are above average, then Professor Wachter's
21 estimates are too low. If in fact they are below average,
22 then they are too high.

23 Q. What about work experience?

24 A. Work experience has been found in numerous
25 economic studies to influence employee pay.

1 Q. If the Dana employees that are at issue here had
2 an above-average level of work experience, how would that
3 affect their market wage?

4 A. Work experience, even for blue collar workers,
5 rises for 15, 20 years at a minimum, and then levels off
6 according to numerous studies, and so if they have more than
7 an average level of work experience, they would receive higher
8 pay on average.

9 Q. Do you know whether the employees at the Dana
10 plants that we've been discussing here have a relatively high
11 level of work experience?

12 A. I have no direct data on that matter. But I do
13 know that there have been expensive layoffs at some of these
14 facilities, and that under the contract, those layoffs have
15 been influenced by seniority, so that the remaining work force
16 is older and more experienced than one would otherwise found.

17 Q. If the quit rate at a particular facility is
18 below the private sector average, does that necessarily mean
19 that the workers there receive above-market pay?

20 A. No, it does not.

21 Q. Can you explain?

22 A. Quit rates are influenced by a variety of
23 factors. As I mentioned earlier, young workers are much more
24 likely to quit than older employees. Economists have found
25 that employees in large corporations are much less likely to

1 quit than employees in -- for small employers. There are a
2 variety of things that have influenced quit rates, and pay is
3 one of those things, but it is by no means the only factor.

4 Q. Let me now turn you to page 3 of your report and
5 in particular, paragraph 6. In that paragraph, you refer to
6 two concepts. One is compensation and the other is labor cost
7 per unit of output.

8 If you could tell us what those two concepts are
9 and what the relationship is between them.

10 A. Compensation, as I've stated before, is the
11 hourly cost of benefits plus the hourly pay. So that's what
12 we have been talking about to date. But what really matters
13 in terms of an employer's competitiveness is a combination of
14 what it costs to an employer, an individual in terms of their
15 compensation, and what that individual actually produces.
16 That is, it's influenced both by pay and by employee
17 productivity.

18 Labor costs per unit of output takes into
19 account productivity by the -- by dividing compensation by the
20 number of units of output or by the value of sales. So that
21 you get a cost in terms that matters in the market.

22 Q. Is it true that, for each dollar reduction in
23 compensation that Dana implements, it will reduce its labor
24 cost per unit of output by a dollar?

25 A. No, it is not correct.

1 Q. Do you have a view as to what the relationship
2 will be?

3 A. I don't know the precise numeric relationship,
4 but I can explain the direction.

5 When an employer reduces compensation, it is
6 very often the case that its best employees leave. There's
7 new hires who are not up to speed, remaining employees are
8 less careful, less conscientious, they have low morale, they
9 may be making more mistakes, and so typically, productivity
10 suffers after an employer has a cut in compensation.

11 And conversely, it's also true that when an
12 employer increases hourly compensation, costs don't rise in a
13 one-for-one direction as well. Improved morale, improved
14 retention of employees, many other kinds of things can come
15 into play.

16 MR. DeCHIARA: Thank you. Nothing further.

17 MR. BENNETT: May I, your Honor?

18 CROSS-EXAMINATION BY MR. BENNETT:

19 Q. Dr. Voos, we have in front of you a binder of
20 some materials that I hope you'll be able to refer to for
21 purposes of your cross-examination.

22 Let's just start with your background and
23 experience. You mentioned, you testified or provided a
24 declaration in the Delphi case, correct?

25 A. I provided a declaration. I did not testify.

1 Q. That was on behalf of the UAW, correct?

2 A. Correct.

3 Q. And I think you mentioned that you've done some
4 work for the Madison Teachers, is that right?

5 A. That is correct.

6 Q. You've done that a couple of times?

7 A. Yes.

8 Q. You've done some work on behalf of National
9 Association of Letter Carriers?

10 A. That is correct.

11 Q. Done that a couple of times?

12 A. Correct.

13 Q. Union group called Unite you worked for, is that
14 correct?

15 A. I worked for them once, yes.

16 Q. A union called AFSCME, for American Federation
17 of State, County and Municipal Employees --

18 A. That's correct.

19 Q. -- you worked for them, is that right?

20 A. That's correct.

21 Q. And you worked for the United Food Union, is
22 that right?

23 A. United Food and Commercial Workers, yes.

24 Q. You've never provided expert services on behalf
25 of an employer, have you?

1 A. I have not.

2 Q. Okay. You're not an expert in human resource
3 management, are you?

4 A. No, I'm not.

5 Q. And you couldn't, for example, advise the court
6 on how best to improve the productivity of Dana's workers
7 while modifying their compensation system; correct?

8 A. Labor economists have examined that. So
9 although I'm not an HR expert, and my knowledge of HR is more
10 casual, I have some information on what economists have found
11 about productivity.

12 Q. Well, you did give a deposition in this case,
13 correct?

14 A. That is correct.

15 Q. And in that deposition, were you asked whether
16 you could advise management at Dana as to how to counter any
17 mechanisms that might affect productivity?

18 MR. DeCHIARA: Your Honor, I would just ask if
19 the witness is going to be asked about questions and answers
20 from her deposition, that she be allowed to look at a copy of
21 her transcript.

22 MR. BENNETT: Sure, it's right in front of her.

23 THE COURT: I thought she has it. I have it.

24 Q. Page 32.

25 A. I am not in the business of consulting with

1 managers or corporations about how to improve productivity.
2 And I said that in the deposition. On the other hand,
3 economists have also studied the relationship between
4 compensation and productivity, and I can testify about that.

5 Q. Well, in fact, in your deposition, you were put
6 this series of questions and gave these, correct?

7 A. That's correct.

8 Q. (Reading):

9 "Question: If you were advising management at
10 Dana as to the means to counter that mechanism, what would you
11 advise?

12 "Answer: That really isn't my area of
13 expertise.

14 "Question: No idea?

15 "Answer: I would ask them to seek a different
16 expert, yes.

17 "Question: Is that just because you haven't
18 done any work on the employer side?

19 "Answer: No, that's because I am an expert on
20 compensation. And this is a -- the questions you are asking
21 fall into other professors's field of study or work."

22 Is that the testimony you gave under oath?

23 A. Yes, it is. And again, I would make the
24 distinction between consulting about a practical human
25 resource management problem, and the question of expertise on

1 what economists have using typically quantitative data across
2 a variety of corporations, but sometimes study of the
3 individual ones have found about influences on productivity.

4 Q. You have not done any research specifically
5 about the motor vehicle parts industry, correct?

6 A. That is correct.

7 Q. And none of your published papers are concerned
8 specifically with the motor vehicle industry, correct?

9 A. That is correct.

10 Q. And there is a body of labor economics research
11 that focuses on the automotive supply industry, correct?

12 A. There has been some work by economists, yes.

13 Q. And you have not reviewed any of that literature
14 for purposes of your opinion; correct?

15 A. I did not review that.

16 Q. And you haven't spoken to anyone at Dana at any
17 time, correct?

18 A. I have not spoken to anyone at Dana.

19 Q. You have not visited any of the Dana plants,
20 correct?

21 A. I have not visited any plants.

22 Q. Okay. Now, you mentioned the Delphi case.
23 That's the only other case in which, in a bankruptcy context,
24 you have provided expert labor economics testimony, correct?

25 A. That is correct.

1 Q. And in that case, you were an expert on the
2 exact same matter as in this case, wage and benefits
3 comparability, correct?

4 A. Correct.

5 Q. And in that case, Professor Michael Wachter was
6 an expert for the debtor, correct?

7 A. Correct.

8 Q. And in that case, your expert report responded
9 to Professor Wachter's analysis, correct?

10 A. Correct.

11 Q. And based on your experience with Professor
12 Wachter, you've concluded that he's a person with very high
13 esteem in the economics profession, isn't that true?

14 A. Yes, he is.

15 Q. And your assignment in this case was to review
16 and respond to Professor Wachter's report, is that right?

17 A. Yes, it was.

18 Q. And the very first thing that you did in this
19 case was to put the report that you had prepared in Delphi
20 back onto your word processor system so that you could create
21 a report in this case based on that prior report; correct?

22 A. Let me explain. I had verbally heard from the
23 attorneys that Professor Wachter had provided essentially a
24 similar analysis. So before I saw his report, I knew it was
25 the same industry, motor vehicle parts, but I knew that the

1 data in the older report was somewhat dated. And so the first
2 thing I did before I even saw Professor Wachter's report was
3 simply to update the tables in that report.

4 Then I read Professor Wachter's report and saw
5 that it had some similarities and some differences, and I
6 modified my analysis accordingly.

7 Q. Isn't it true, Dr. Voos, that you started your
8 work in this case by putting the report that you prepared for
9 Delphi into your word processor, that's the first thing you
10 did?

11 A. Yes, it's true.

12 Q. Okay. And isn't it true that the report in this
13 case contain some of the same sentences from the earlier
14 report in the Delphi case?

15 A. There are some sentences that are the same. In
16 fact, I think the paragraph on my qualifications is identical.

17 Q. Okay.

18 A. They haven't changed markedly.

19 Q. But there were some things you decided to take
20 out from the expert opinion in this case, isn't that true?

21 A. Yes, there were some things. This case was a
22 little different. This case was specific to five facilities
23 and Professor Wachter's analysis was a little different.

24 Q. Well, let's look at one particular thing. Could
25 you go to tab A, please?

1 A. Sure.

2 Q. That's Debtor's Exhibit 177.

3 A. Yes.

4 Q. And that is the declaration that you gave in the
5 Delphi case, correct?

6 A. Yes, it is.

7 Q. And if you could go to page 3 there --

8 A. Yes.

9 Q. -- paragraph 5?

10 A. Yes.

11 Q. This concerns comparability, do you see that?

12 A. Yes, I do.

13 Q. And you say in that paragraph, "Comparability is
14 a standard commonly used in arbitration in comparing the total
15 compensation of different groups of employees where
16 compensation includes both direct pay and the cost of various
17 employer-provided benefits. Such arbitration is common in the
18 public sector where it provides a means of settling the terms
19 of collective bargaining agreements when the parties cannot
20 agree but strikes are prohibited by law. Interest arbitration
21 is not common in the private sector where direct negotiation
22 of contracts and compromise of difference is encouraged by the
23 freedom to take direct economic action when the parties cannot
24 agree to new contract terms. For this reason, it is not clear
25 to me that the court should deem comparability of total

1 compensation between Delphi employees and other employees to
2 be particularly relevant to this case. Doing so might
3 short-circuit the collective bargaining process."

4 Do you see all of that?

5 A. I do.

6 Q. And you decided not to put that into your expert
7 report in this case, correct?

8 A. I did not put it in this report.

9 Q. But you still hold that view. Isn't that true?

10 A. Let me explain my view. One of the reasons we
11 can do comparability in the public sector is that in the
12 public sector, as I said before, wages and the cost of
13 benefits are public information. We can find good matches in
14 the situation at hand.

15 In the private sector, employers have been very
16 careful not to make this public information, and the BLS
17 often, you know, why doesn't it publish information on the
18 motor vehicle parts industry that we could look at really
19 directly to get this comparison? Well, because they are
20 concerned about the confidentiality of data.

21 The only data on direct competitors is assembled
22 by employers or by employer associations, and it's not
23 neutral, it's not publicly available, it's not vetted through
24 the economists of the BLS, and it just is not of the same
25 nature. It's not of the same quality. It's always something

1 that's harder to look at, and less useful.

2 So I do think this is a matter as a professor,
3 rather than as an attorney, that I was kind of straying into
4 one of my opinions but I think my opinion is that, you know,
5 it stands as to whether or not Bankruptcy Court should be
6 doing it. But whether or not they do it is really a matter of
7 law, and it's probably, you know, I'm not a legal expert. So
8 that's not my expert opinion, that's kind of more of a
9 personal opinion.

10 Q. Okay. This statement in paragraph 5 of your
11 Delphi declaration, even though you decided not to put it into
12 your declaration in this case, you think it applies to this
13 case as well, correct?

14 A. I don't disavow this statement.

15 Q. Okay. Now, you did give a deposition in the
16 Delphi case; even though you didn't testify; correct?

17 A. That is correct.

18 Q. And that deposition explored the bases for your
19 opinion in that case, correct?

20 A. That is correct.

21 Q. And if we read that deposition, we'd find out
22 whether there's any inconsistency between the bases of your
23 opinion in that case, and the bases of your opinion in this
24 case, isn't that true?

25 A. That is correct.

1 Q. And you have a copy of the deposition, don't
2 you?

3 A. I actually, I threw it out after the case. I
4 have a small office, and I just clear it out periodically.
5 There was -- I read it through once, threw it out. It may be
6 on my computer somewhere. I don't know if I could find it.
7 It's just not something I looked at.

8 Q. You're pretty sure your counsel has a copy of
9 it, aren't you?

10 A. I suspect they have a much better filing system
11 than I do.

12 Q. There's no physical reason why it couldn't have
13 been produced in this case, is there?

14 A. I can't answer that. That you'd have to ask
15 them.

16 Q. Okay. You do know that there is something
17 called a virtual data site associated with this case?

18 A. I learned about that at the deposition. I had
19 not received permission to access that site before the
20 deposition.

21 Q. I take it you didn't ask what was on that site
22 that might be relevant to your analysis, is that right?

23 A. I did not know of its existence or that I had
24 access to it. I had Professor Wachter's declaration, I had
25 Mr. Chris Bueter's declaration and I was asked to base my

1 report on them.

2 Q. Okay. Now, you mentioned this fellow Professor
3 Belman. Could you tell the court who that is?

4 A. Daily Belman is a professor at Michigan State
5 University. He has a Ph.D. in economics. He worked with me
6 and helped me prepare this report by gathering data and
7 providing an initial draft of some sections. We worked
8 together on other cases. In his vitae, and his publications,
9 his work as expert are detailed in his vitae.

10 Q. That fact, Professor Belman did a draft of a
11 section on firm size in your report, correct?

12 A. He definitely did that draft, and as with that
13 section and other sections, everything he drafted I went over
14 sentence by sentence, was -- often changed it to some extent,
15 and made sure that I was fully informed of and fully in
16 agreement with every word.

17 Q. Okay. He did a draft of the section on quit
18 rates. He did the first draft?

19 A. He did a draft on that section, yes.

20 Q. He did the first draft of the section on work
21 levels within occupations, correct?

22 A. That is correct.

23 Q. And your view is, he actually knows more about
24 that than you do. Correct?

25 A. That is correct. That's why I asked him to

1 draft that section.

2 Q. And at least as of the time of your deposition,
3 Professor Belman had put in about 13 hours on the project and
4 you'd put in about 18 hours, is that correct?

5 A. At the time of the deposition, that was my
6 estimate and I had not actually added up my hours, so...

7 Q. Okay. You're actually not precisely sure when
8 you look at your report who did what on the various tables in
9 your report, correct?

10 A. I would like to say that I checked and rechecked
11 and double-checked every number ultimately that was in my
12 report and every sentence in my report. And while Professor
13 Belman helped me, and in fact, looked it over and did some
14 work, ultimately, I am fully responsible for everything in
15 that report.

16 Q. Well, were you asked this question in your
17 deposition and did you give this answer:

18 "Question: And you're saying those were
19 prepared initially by Professor Belman?" This is on page 13.

20 "Answer: No. I'm not saying that. I prepared
21 table 1. I think Professor Belman may have checked it. We
22 both worked on different tables. I can't even -- I'm not even
23 sure I can recall at this point who did precisely what on each
24 table. But we both checked the figures to be sure we were
25 right."

1 MR. DeCHIARA: I'm sorry, what line are you
2 reading from?

3 MR. BENNETT: That would be page 13, line 20.

4 Q. Was that the testimony?

5 A. That was the testimony, and I don't see how it
6 contradicts what I just said. We both worked on it. He
7 checked me, I checked him. I'm really concerned that the
8 final product is correct.

9 Q. Okay. Let's move to a different subject. You
10 mentioned the part about unit labor costs in response to
11 Mr. DeChiara's questions. Remember that?

12 A. Yes.

13 Q. Okay. And your view is, reducing compensation
14 does not necessarily produce a one-for-one reduction in union
15 labor costs, is that right?

16 A. Correct.

17 Q. And as you sit here today, you don't have any
18 way to predict the ultimate outcome here in terms of whether a
19 reduction in compensation will or will not lead to specific
20 reduced unit labor costs, isn't that true?

21 A. I cannot quote a precise figure on it.

22 Q. You don't have any way to evaluate what other
23 relevant factors that could affect union labor costs here,
24 correct?

25 A. I was not attempting to do that. I...

1 Q. But --

2 A. -- I don't know what you're talking about, but
3 certainly, there are many factors that could affect unit labor
4 costs, but most specifically there are many factors that could
5 affect productivity.

6 Q. Okay. In talking about unit labor costs, you
7 don't have any human resources expertise to determine whether
8 there are ways to improve the effects on unit labor costs from
9 reduced compensation, correct? We already established that.

10 MR. DeCHIARA: I would just object to the form
11 of the question.

12 A. I'm not sure what you're saying.

13 MR. DeCHIARA: I was just going to object to the
14 form of the question. I think it was a little compound. I
15 think it was unclear. I'd ask that it be restated.

16 MR. BENNETT: We'll do it again if we have to.

17 THE COURT: Go ahead.

18 Q. Let me start on a different approach to this.
19 When you're telling the judge that you think unit labor costs
20 might not go down as well they should, as much as they should
21 as a result of reduced compensation, one of the things that
22 you're suggesting is that workers at Dana with reduced
23 compensation may willfully try to reduce their production
24 levels, isn't that true?

25 A. That may occur, but they may -- there may be

1 reduced productivity from things that are not willful. As I
2 stated, it may be that less-qualified employees are the ones
3 that stay on the job rather than take other work. New hires
4 are there. They are less good at problem solving, they have
5 lower morale. Yes, wait may be willful or it may not be
6 willful. There are various things that lead to changes in
7 productivity.

8 Q. Just in that vein, willful or non-willful
9 actions by workers that might affect unit labor costs, you
10 can't tell the judge whether or not there are ways from a
11 human resources perspective to ameliorate those, to address
12 those, correct? Because you're just not a human resources
13 expert.

14 A. I work in a school of management and labor
15 relations and my knowledge of human resource management is
16 casual rather than expert, yes.

17 Q. And you mentioned before the problem about
18 attracting skilled workers. Correct? That's one of the
19 things that might affect unit labor costs, correct?

20 A. Correct.

21 Q. And that assumes that Dana needs to hire a bunch
22 of new people, correct?

23 A. I don't know if it assumes it needs to hire a
24 bunch of new people. It assumes that there will continue to
25 be turnover and employees will continue to retire and, if in

1 fact wages are reduced substantially below what they can earn
2 in the area in similar types of work, that -- yes, more will
3 quit.

4 Q. Okay. And the problem about attracting skilled
5 workers, that is not based on any actual experience at Dana in
6 terms of Dana having difficulty attracting skilled workers.

7 A. I have no actual experience at Dana.

8 Q. You know that Dana has a two-tiered system,
9 correct? At some of the plants.

10 A. At two of the five plants, there are currently
11 tier 2 employees, yes.

12 Q. And you would agree that looking at the
13 experience with the tier 2 in terms of how successful Dana has
14 been in attracting and retaining workers, that could be a
15 useful source of information, correct?

16 A. I haven't seen that information and I don't know
17 if you've presented it or not.

18 Q. It would be useful to see it, isn't that true?

19 A. It might be relevant information. It certainly,
20 \$13 an hour is certainly different than 11.05.

21 Q. Okay. But you haven't seen it.

22 A. No, I have not.

23 Q. And you haven't looked at any other corporations
24 in Dana's industry that have modified compensation to
25 determine whether they had any problems in attracting and

1 retaining workers, correct?

2 A. You know, just this morning, I was looking at an
3 article that someone suggested I read. It's an article that
4 was about Henry Ford and his experience with wages. It was
5 written partly by Larry Summers, recently president of Harvard
6 University, Secretary of the Treasury before that, and it was
7 about Henry Ford's experience when he decided in 1914 to raise
8 wages to \$5 a day.

9 Before he did that, and wages were only \$2.34 an
10 hour, there were large numbers of job seekers. He had no
11 trouble at all attracting workers at the lower wage, but they
12 were not workers that ended up being nearly as productive as
13 the workers that he was able to hire and retain at the higher
14 wage rate.

15 Productivity went up substantially and that's
16 obviously not something I have firsthand knowledge of. It's
17 something I read by an economist about the effect of wages on
18 productivity, and how higher wages can increase productivity
19 or how simply having job applicants at a lower wage rate
20 doesn't necessarily mean that that is the right wage rate or
21 the most profit-maximizing wage rate.

22 Q. Henry Ford notwithstanding, you don't have any
23 information, and you can't share it with the Court, about the
24 actual experience of other employers in Dana's industry in
25 terms of modifying their compensation, whether that's had any

1 effect on attracting and retaining skilled workers, isn't that
2 true?

3 A. I have not studied that on a systematic basis.

4 Q. You would agree with me that, in the automotive
5 supply industry today, there is a reduced level of demand for
6 labor, correct?

7 A. Um -- I have to speak, as you've pointed out,
8 not as an industry expert but as just someone who reads the
9 newspaper, has relatively -- well, casual interest in these
10 things, and I would agree with that statement on that basis.

11 Q. Okay. And that's as a result of a reduced level
12 of sales for, particularly, American automobiles, correct?

13 A. That is as I said, my non-expert judgement.

14 Q. And that's in part due to international
15 competition in the automotive supply industry, correct?

16 A. It's presumably due to a variety of factors,
17 among them being global competition, product quality, all
18 kinds of things.

19 Q. And would you agree that the degree of product
20 demand and the degree of competition in an industry can
21 influence pay levels in the industry, isn't that true?

22 A. I would agree that that is a general truth.

23 Q. And you'd agree that areas with high
24 unemployment and less demand for labor typically have lower
25 wage rates, correct?

1 A. There is an extensive literature on that
2 subject, and controlling for a large number of other factors,
3 there is some influence of area unemployment on pay, though it
4 is not immediate, and it is relatively small.

5 Q. You would agree that decreasing demand for labor
6 in the auto supply industry will tend to have some downward
7 influence on wage rates, correct?

8 A. It will tend to retard wage increases, other
9 things equal. It may or may not result in actual pay
10 reductions, but it is not a passive factor for wages, let's
11 put it that way.

12 Q. Okay. And you would agree in the other
13 direction that the degree of competitiveness in a market may
14 determine the employer's ability to raise prices for goods,
15 correct?

16 A. Can you restate that?

17 Q. Yes. We're talking about the product, now,
18 rather than the labor. If you've got a highly competitive
19 product market, more entrants into the market, highly
20 competitive, that tends to retard the ability of an employer
21 to raise prices, correct?

22 A. Correct.

23 Q. And in highly competitive product markets where
24 the employer has difficulty raising prices, that may have a
25 negative effect on wage rates; isn't that true?

1 A. The economic theory of wages assumes that all
2 product markets are highly competitive, and it assumes also
3 that employers are wage-takers, which is the theory behind
4 Professor Wachter's paper. But as a matter of fact, in our
5 imperfect world, I would actually agree with your statement.

6 Q. Okay. And it is fair to say that U.S. auto
7 suppliers are in the process generally of negotiating
8 different pay levels with their employees and for those
9 employees who are not union-represented, they have
10 unilaterally in some instances changed pay for their
11 employees; isn't that true?

12 A. Yes, and I also read, and I think this is
13 important, that there, Ford Motor in particular is
14 negotiating, plant by plant, different work rules, different
15 productivity. So this is a case where, yeah, they are worried
16 about wages but they are also worried about productivity
17 because what really matters is unit labor costs.

18 Q. Okay. In setting pay levels, you'd agree that
19 since pay and compensation levels indirectly affect operating
20 costs, they must be set with an eye on both the competitors'
21 cost and what the organization can afford to pay; isn't that
22 true?

23 A. That is correct.

24 Q. And you'd agree that product market conditions
25 set the maximum beyond which the organization will be unable

1 to competitively price its goods and services?

2 A. I believe you're reading from -- are you reading
3 from a textbook?

4 Q. I'm reading from a textbook that you actually
5 told me at your deposition was credible.

6 A. I've actually forgotten the source. Can you
7 remind me?

8 Q. Sure. Go to page 170 in your deposition.
9 Starts in the previous one. It's the Newman text, which I
10 think was cited in your report. Starts at the bottom of page
11 169, "Hence the product market conditions set the maximum
12 beyond which the organization will be unable to competitively
13 price its goods and services," you agree with that, do you
14 not?

15 A. I would not disagree with that.

16 Q. And then the next page goes on and says, "Labor
17 market conditions set the minimum pay level to attract and
18 retain a pool of qualified workers. Set the pay level too low
19 and managers will have trouble attracting and holding
20 employees. Set the pay level too high and the employer's
21 ability to sell products will be affected."

22 You agree with that, correct?

23 A. That's a very general textbook statement that
24 would be hard to disagree with.

25 Q. Okay. The analysis that you did here in this

1 case, would you call that a comparability study?

2 A. My analysis was not a full comparability study,
3 really, any more than Professor Wachter's was. He looked at
4 one factor, occupation. I looked at two factors which I think
5 are as important in blue collar pay or more, which is industry
6 and establishment size. And I don't claim that my analysis is
7 a full analysis. However, when I think about the other things
8 that one would have to include to make it a full analysis,
9 things like location, the corporation size, that would do
10 nothing but raise these numbers that I created.

11 And then of course there's the question of
12 occupation. My analysis assumes that the occupational
13 distribution of Dana's employees are just average for the
14 motor vehicle parts industry. I don't know that's the case,
15 but I have seen no evidence from Dana Corporation that it's
16 not the case, either. In fact, Professor Wachter often
17 assumes averages and clearly, if the occupational distribution
18 is above average, then my numbers are too low, and if they are
19 below average, then my numbers are too high.

20 Q. You mentioned I think in response to
21 Mr. DeChiara's questions the idea of a comparability gold
22 standard, right?

23 A. Yes, I did.

24 Q. And the comparability gold standard from your
25 perspective is to try to control as many different factors as

1 possible in order to focus on the most, the closest
2 comparison, isn't that right?

3 A. That has been what has been done in settings in
4 which this type of pay analysis is employed, yes.

5 Q. Okay. You didn't meet the gold standard with
6 your study, correct?

7 A. No, I did not.

8 Q. And in particular, you didn't run any comparison
9 of wages and benefits of Dana's competitors, correct?

10 A. As I explained to you when I discussed why
11 comparability is used less in the private sector, I was not
12 able to do that. That data is not publicly available. And
13 that is in fact the precise reason why I have to use these
14 estimates, you know, based on this factor and that factor from
15 the BLS. We can't do the gold standard.

16 Q. Okay. You didn't make any effort to survey
17 whatever available literature is out there as to whether
18 Dana's competitors are attempting to restructure their wage
19 and benefits at their high-wage plants, correct?

20 A. Well, I was not asked to survey that literature.

21 Q. And you didn't make any effort to survey
22 information about whether Dana's competitors are moving some
23 of their operations to low-wage southern areas, correct?

24 A. I was not asked to do that.

25 Q. And you didn't do any analysis of the effects of

1 high wage and benefits on Dana's competitors that have gone
2 into bankruptcy, correct?

3 A. I was not asked to do that.

4 Q. Okay. You would agree, would you not, that
5 there are circumstances in which some of the factors that
6 you've talked about that can affect pay are correlated one to
7 the other, correct?

8 A. That is correct.

9 Q. There may for example, I think you mentioned
10 this, be some relationship between firm size and establishment
11 size, correct?

12 A. I am not sure of the degree of correlation. One
13 would need data on that. But I believe there's a small
14 positive correlation between employer establishment size and
15 employer firm size, although I really, absent any data, I
16 can't say how big the correlation is.

17 Q. Well, big employers like GM have big plants,
18 correct?

19 A. Sometimes they do, and sometimes they do not.
20 And there are studies that have data and show the
21 correlations. But if we don't have the data, we, you know,
22 have to assume zero.

23 Q. Okay. It would be fair to say that unionization
24 is a factor that can affect wage and benefit rates, correct?

25 A. That is correct.

1 Q. And it is fair to say that unionization is
2 correlated to geographic location; for example, workers in the
3 north are more likely to be unionized, correct?

4 A. That is correct.

5 Q. And unionization is correlated, for example,
6 with big cities versus small towns, correct?

7 A. That is correct.

8 Q. And unionization is correlated with large firms
9 versus small firms, correct?

10 A. That is correct.

11 Q. And unionization is correlated with the
12 manufacturing sector versus other sectors?

13 A. Actually, at the present time, the manufacturing
14 sector is no longer above average in terms of unionization.
15 You're correct historically.

16 Q. Okay. You would agree that the aim of unions is
17 to raise, in general, the wages and benefits for workers,
18 correct?

19 A. That is one of several union aims. It's not
20 their only aim. But yes.

21 Q. And you would agree that one of the aims of
22 unions is to attempt to increase total compensation for
23 workers above what the market level would otherwise be,
24 correct?

25 A. That is one of their several purposes, yes.

1 Q. And would you agree that unions usually succeed
2 in increasing total compensation above market levels, correct?

3 A. I would say that usually but not always, unions
4 are successful in that effort. They are more successful in
5 some contexts than others.

6 Q. Okay. You would agree that even the threat of
7 unionization may cause compensation levels to rise at a firm?

8 A. Sometimes private sector employers pay higher
9 pay than they would otherwise have to or want to in order to
10 keep their employees from choosing to unionize, yes.

11 Q. In this case, you have not determined whether
12 any unions at Dana have succeeded in raising compensation
13 above market level, correct?

14 A. Actually I would think the unions that are
15 paying me in this case would be rather abashed to learn that
16 their pay levels for their represented employees are below the
17 benchmark for the industry.

18 Q. You assume they have been successful, correct?

19 A. No, I have to say as a result of my analysis
20 that I would say they have not been successful.

21 Q. You think the unions have been working at this
22 for years and not succeeded at all?

23 A. I have to say, just based on the data that I
24 looked at, that the pay at these facilities is not high, and
25 total compensation is about average.

1 Q. Okay. Let's talk about work levels. You
2 mentioned that that's something that you think should have
3 been refined in Professor Wachter's analysis, correct?

4 A. I think that since he focused on occupation
5 alone, he might have done it in a more precise way. Instead,
6 he chose to assume the average and that's not how the BLS
7 suggests this data should be used.

8 Q. You weren't here when Professor Wachter
9 testified, were you?

10 A. I was not here yesterday. I did hear the
11 remnants of his cross-examination this morning.

12 Q. Okay. Did you hear the part about how he went
13 back and looked at work levels? Did you hear that part?

14 A. I did not. And because it was yesterday, I did
15 not have a chance to review the transcript.

16 Q. Okay. So you don't know whether that reanalysis
17 confirmed that the work levels were in fact consistent with
18 industry average?

19 MR. DeCHIARA: Your Honor, I would just raise an
20 objection. I'm not sure --

21 THE COURT: Sustained.

22 MR. BENNETT: Okay.

23 Q. You don't know one way or the other what his
24 reanalysis --

25 A. I based my work on his initial report.

1 Q. At the end of the day, I think you already said
2 this, you can't tell from what you looked at whether Professor
3 Wachter actually may have underestimated the market level,
4 correct?

5 A. That is what I wrote in my report.

6 Q. Okay. Let's talk about regional variations.
7 What you showed us in your report, I think it's tab B, that's
8 your declaration, UAW 1, are you there with the table?

9 A. Table 1?

10 Q. Right.

11 A. Yes, I am.

12 Q. That's not the automotive sector?

13 A. No, that is the goods-producing sector. The BLS
14 does not release data for the motor vehicle parts industry for
15 these counties. As I said, are they are concerned with
16 confidentiality.

17 Q. Okay. And that is not some trend data, is it?

18 A. No, this is at a point in time.

19 Q. Okay. And you in fact haven't looked at any
20 trend data to determine whether those regional variations may
21 be changing.

22 A. I have not systematically reviewed studies, but
23 I know from my training and experience as a labor economist
24 that those regional -- excuse me, let me start again --
25 regional differences in wages do change, albeit slowly over

1 time.

2 For example, the south has always been a
3 low-wage part of the United States. Its wages are less low in
4 comparison to the northern part of the United States than it
5 used to be, but I do know that these differences persist over
6 a long period of time.

7 I have not recently reviewed studies of how
8 regional or area wages are changing.

9 Q. Okay. And you certainly haven't looked at how
10 regional differences in the auto supply industry have changed,
11 correct?

12 A. No, I have not.

13 Q. Do you know that in the '40s and '50s, at least,
14 the auto supply industry changed in terms of regional
15 concentration as workers came from the south and moved toward
16 the north to get into that industry? Do you know about that?

17 A. That's really not something that I can testify
18 on.

19 Q. Not really a student of labor history?

20 A. I'm not a student of labor history of the auto
21 supply industry, no.

22 Q. You would agree that Dana operates in a market
23 where it competes with suppliers from other locations,
24 correct?

25 A. Yes. The entire, you know, motor vehicle

1 industry in the United States has -- competes.

2 Q. And you would agree that domestic motor vehicle
3 producers are outsourcing greater amounts of automotive
4 supplies overseas, especially the lower-wage countries such as
5 Brazil, South Korea and Mexico, correct?

6 A. As I said, that's any non-expert impression, but
7 I can't give you any expert testimony on the size and precise
8 level of that trend.

9 Q. And you would agree that for Dana to be
10 competitive, it has to be able to provide products that are
11 equivalent to what other suppliers could produce at other
12 locations, correct?

13 A. It has -- hopefully, it will produce better
14 quality components, if not equally good components. And
15 obviously, also, in comparing different locations, let me say
16 the following:

17 One of the things that affects cost is location.
18 So when a supplier is closer to a manufacturer, that gives it
19 a competitive advantage in terms of having lower
20 transportation costs, and being able to respond to
21 just-in-time inventory, pressures from the original equipment
22 manufacturers or other manufacturers.

23 So it is true that obviously, it's competing
24 with manufacturers at more distance or other locations. But
25 sometimes, location itself is part of the competitive

1 equation.

2 Q. You would agree that Dana, to be competitive,
3 must consider what prices its competitors are charging,
4 correct?

5 A. Of course.

6 Q. And you do know that, at least in the auto
7 industry, original equipment manufacturers have, in many
8 instances, successfully demanded reductions in product costs
9 from year to year. You know about that, correct?

10 A. I know about that. I was really interested to
11 read in The Wall Street Journal just, I don't know, last
12 couple of weeks, that it appears that the OEMs are no longer
13 being able to reduce prices for the suppliers in the same way
14 that they have in the past. It was a front-page article. I
15 don't remember precisely the day. So, you know, my knowledge
16 of this is entirely based on things like newspaper stories,
17 and --

18 THE COURT: Mr. Simon may be able to help you
19 with the news media.

20 MR. BENNETT: He's got The Post.

21 THE COURT: I did read that Wall Street Journal
22 article. There are other Wall Street Journal articles which
23 anecdotally the contradict the expert testimony obviously of
24 yesterday and today. So much for the media. If we want to
25 use the media for expertise, you can, but we won't try this

1 case based on media representations.

2 Q. Let's move on to efficiency wages. Do you know
3 about that term?

4 A. I do.

5 Q. And would you agree that research on efficiency
6 wages is not very advanced?

7 A. I believe it has been inconclusive. However, it
8 is not a theory that is something that has been disproven,
9 either. I was really interested to find out that Professor
10 Summers, for example, had done a number of articles supporting
11 the concept of efficiency wage theory. On the other hand, I
12 would not state that it is something that is either generally
13 validated or generally invalidated by the profession. It's
14 just one theory.

15 MR. DeCHIARA: Your Honor, if I can be heard, I
16 don't want to be overly technical here, but right following
17 this witness, you're going to hear from Dr. Helper, who does
18 discuss efficiency wage. She is the expert. Dr. Voos has
19 something in her report about efficiency wage. I just think
20 in terms of the efficiency, if I can use that word of this
21 proceeding, it might be better to save the efficiency wage
22 questions for the expert on that matter.

23 MR. BENNETT: Let's at least try this small
24 part.

25 Q. You would agree that Dr. Belman, your

1 colleague's views on efficiency wages, are authoritative?

2 A. I respect his views. I'm not sure I, you know,
3 have one hundred percent agreement with them, but I definitely
4 respect his views.

5 Q. Would you go to tab D in your binder, please.
6 And that is a study or set of information from Dr. Belman and
7 some of his colleagues, correct?

8 A. That is correct. That is the report that I
9 referred to earlier, the study of studies. The study of the
10 effect of large employer size on employee compensation.

11 Q. This is something you actually relied on for
12 your report, correct?

13 A. Correct.

14 Q. Okay.

15 MR. BENNETT: We'll offer Debtor's Exhibit 184,
16 your Honor.

17 MR. DeCHIARA: We have no objection.

18 THE COURT: Received.

19 MR. BENNETT: Okay.

20 (Debtor's Exhibit 184, received in evidence, as
21 of this date.)

22 Q. Could you get to page, it's 22 at the bottom.
23 It says, "Voos 163" in there.

24 A. Yes.

25 Q. And under efficiency wages, there's a long

1 paragraph --

2 THE COURT: What page is that?

3 MR. BENNETT: It's page 22. Voos 163 in the
4 middle. It's actually marked as reliance material in the
5 case.

6 THE COURT: Go ahead.

7 Q. Okay. You see the segment that talks about
8 efficiency wages?

9 A. I do.

10 Q. You've read this whole article --

11 A. I have. I haven't memorized it but yes, I've
12 read it several times.

13 Q. The part in there that says, "Research on
14 efficiency wages is not very advanced, but there is little
15 indication that the employer size premium is explained by
16 factors associated with efficiency wage schemes," do you agree
17 with that?

18 A. Yes, and let me explain what he's talking about.
19 He's not talking about efficiency wage theory in general.
20 He's talking about the question of why it is that large
21 employers pay higher wages. Efficiency wage theory is about
22 this, but it's about many other things as well. And he's, in
23 this article he and Erica Groshen go through various theories
24 of why it is and what research demonstrates about the validity
25 or invalidity of those particular theories for an -- a good

1 explanation of this fact that we observed, that large
2 employers pay more.

3 And he's saying that, with regard to this
4 matter, with regard to the effect of employer size on pay, you
5 know, efficiency wage theory has not been demonstrated to be a
6 conclusive reason, and I would agree with that.

7 I said in my report that I am agnostic about why
8 it is that large employers pay more, why large establishments
9 have higher wages. There are a variety of theories. Probably
10 several theories are simultaneously true. And proponents of
11 any one of these theories have not convinced economists that
12 their individual theory is the reason.

13 Q. You have read Dr. Helper's declaration in this
14 case?

15 A. I read it once.

16 Q. Okay. Could you go to tab E; Union Exhibit 8.

17 A. Yes.

18 Q. And could you go to page 15, paragraph 45. Are
19 you there?

20 A. Yes, I am.

21 Q. In the first sentence there in the conclusion,
22 Dr. Helper writes, "Dana has had for many years a high wage
23 policy."

24 Do you agree with that?

25 A. I do not have knowledge of what their intended

1 policy is. And I did not look at what their wages were in
2 prior years. So I cannot say for many years. I would say at
3 the present time, their wages are no longer high wages. But
4 of course, I was just looking at these five plants. Maybe
5 they have a high wage policy in other plants.

6 Q. Okay. Mr. DeChiara mentioned quit rates. No
7 part of your analysis has concerned quit rates, correct?

8 A. I did not look at quit rates.

9 Q. And separate question. You don't have any
10 analysis of retiree insurance costs, correct?

11 A. No, I do not.

12 Q. You can't tell the court what burden that might
13 have on Dana's profitability, correct?

14 A. I have not looked at that.

15 Q. Okay. Now, the analysis that you did do, I
16 hesitate to call it a comparability study, because -- how do
17 you call it, your wage build-up, what do you call it? The
18 thing that you did in your report, it's not a comparability
19 study. What is it?

20 A. I was asked to analyze the adequacy of Professor
21 Wachter's study, and I did it by demonstrating a different
22 approach, a really, I think standard approach based on
23 industry.

24 Q. So what do you call it, a critique?

25 A. I don't have a title.

1 Q. Okay. Your thing that you did.

2 A. My declaration, yes.

3 Q. Okay. The thing that you did that's not a
4 direct comparison to competitors for Dana, correct?

5 A. Correct.

6 Q. It's based on a number of estimates, correct?

7 A. It is based on publicly-available data from the
8 Bureau of Labor Statistics, just as Professor Wachter's study
9 is based on BLS data. His is also not a look at competitors.

10 Q. Basically, what do you is build up from the
11 goods-producing sector, correct? That's where you start.

12 A. I have direct evidence, as I said, in table 2-B,
13 about wages in the motor vehicle parts industry. And I show
14 that very direct data where it's available.

15 Where direct data is not available, I use the
16 best data that is available to create a reasonable estimate,
17 and ones that I, as my testimony indicated, come in pretty
18 close to the direct data.

19 Q. Okay. So you've got information from the
20 goods-producing sector, you've got an estimate for motor
21 vehicles, correct?

22 A. Correct.

23 Q. And you've got an estimate for large firms,
24 correct?

25 A. There is data on large establishments. I refer

1 to studies of large firms. I don't have data on large firms.

2 Q. And then you've got an estimate for removal of
3 supervisory personnel, correct?

4 A. Correct.

5 Q. Okay. And that gets you to your total
6 compensation thing, whatever it is, your estimate.

7 A. Which is, by the way, remarkably close to
8 actual.

9 Q. Okay. And that in summary is at page 36 -- or
10 page 17. Is that right?

11 A. Where are you, please? At which tab?

12 Q. It's tab B, your report.

13 A. Yes.

14 Q. And there you've got actually two different sets
15 of numbers. One has to do with production numbers. That's
16 this \$26.11 figure, right?

17 A. I'm sorry, I'm on page 17. Where are you
18 looking?

19 Q. Page 17, paragraph 36.

20 A. Yes.

21 Q. You've got total compensation of production
22 workers is approximately \$26.11, right?

23 A. For the goods-producing sector, correct.

24 Q. And you haven't taken that number and compared
25 it to any of Dana's numbers, correct?

1 A. That's not the most precise industry. One could
2 do that. But I have not done that.

3 Q. Okay. What you do is, you go to the second
4 numbers and get your 29 to \$31 figure, correct?

5 A. That is correct.

6 Q. And that's the comparison that shows up on these
7 two, Union 58 and 59, is that right?

8 A. That is correct.

9 Q. And that's the numbers that you use for the
10 remainder of your testimony, is that right?

11 A. That is correct.

12 Q. Okay. The compensation level at 29 to 31, have
13 you compared that? Go back to tab G, Debtor's 46, I believe,
14 in evidence. Have you done any analysis to compare your 29 to
15 31 figure with the numbers in the Dana column on debtor's 46?

16 A. I have not.

17 Q. Okay.

18 A. And I would like to add, one reason I have not
19 is that Professor Wachter and debtors, to my knowledge, were
20 not very clear on how these numbers were derived.

21 I don't know, for example, to what extent they
22 are elevated because there have been extensive layoffs at
23 these facilities and hence, there's an older work force, and
24 under most types of pension plans, that means that that will
25 temporarily elevate the per-employee cost of the pension.

1 So this is really, this kind of plant-by-plant
2 analysis is difficult. I really don't know how Dana is
3 allocating these costs across plants. I would suspect that
4 these figures reflect things like downsizing at these plants.

5 MR. BENNETT: Move to strike, your Honor, as
6 totally speculative.

7 MR. DeCHIARA: Objection, your Honor, it's based
8 on her expert view --

9 THE COURT: It's pure guesswork. Sustained.

10 Q. Just in terms of the analysis you did where you
11 blend tier 1 and tier 2 information --

12 A. I do that to derive -- and also the wages paid
13 to skilled workers, to derive an average wage rate for the
14 plant, yes.

15 Q. You do that, for example, in Union 59, the last
16 thing that Mr. DeChiara showed you, this one (indicating) --

17 MR. BENNETT: -- if I may approach.

18 A. No, Union 59 does not blend categories. Union
19 59 looks only at the new tier 2 employees and in constructing
20 this, I took the proposed wage for tier 2 employees, \$11.05 an
21 hour, and added it to the amount that Dana said it was going
22 to provide in terms of benefits per employee. So I used
23 Debtor's 55 as to the value of benefits that they were
24 proposing and added pay, 11.05, to that number for benefits,
25 under the assumption that the benefits would be the same for

1 tier 2 employees. I'm not a hundred percent sure that's the
2 case, but that's the most generous type of assumption, to
3 arrive at those proposed total compensation figures for tier 2
4 employees. So it does not mix different types of employees.
5 It's just new tier 2 employees.

6 Q. You do know that the tier 2 level of employees,
7 that's not part of the 1113 motion, correct?

8 A. I was not aware of that.

9 Q. Okay.

10 MR. BENNETT: Nothing further.

11 MR. DeCHIARA: Your Honor, I have no questions,
12 and just I can't remember whether I moved the admission of
13 Dr. Voos' declaration, and if I did not do that, I will do
14 that now.

15 THE COURT: Received. Any further inquiry?
16 Thank you.

17 (The witness is excused.)

18 THE COURT: Off the record.

19 (Discussion off the record.)

20 (Recess taken.)

21 MR. DeCHIARA: Your Honor, as our next witness,
22 the unions call Dr. Susan Helper.

23 S U S A N H E L P E R , having been duly sworn, was
24 examined and testified as follows:

25 (Continued on following page.)

1 DIRECT EXAMINATION BY MR. DeCHIARA:

2 Q. Good afternoon, Dr. Helper.

3 A. Good afternoon.

4 Q. Where are you employed?

5 A. I'm employed at the Weatherhead School of
6 Management at Case Western Reserve University.

7 THE COURT: Slower.

8 THE REPORTER: Slower, please.

9 A. I'm the SBC Professor of Regional Economic
10 Development and I'm the acting chair of the economics
11 department.

12 THE COURT: Not that slow.

13 Q. What is your area of academic specialty?

14 A. I'm an organizational economist and I focus on
15 the motor vehicle parts industry.

16 Q. What is an organizational economist?

17 A. We study the constellation of policies that a
18 firm might adopt and how, taken together, those policies
19 affect a firm's performance.

20 Q. And are, do the policies you look at include
21 compensation policies?

22 A. Yes, they do.

23 Q. Where and when did you receive your Ph.D.?

24 A. I received a Ph.D. in economics from Harvard in
25 1987.

1 Q. And what was the subject of your Ph.D.
2 dissertation?

3 A. The motor vehicle parts industry.

4 Q. And have you continued to study the auto parts
5 industry since then?

6 A. Yes, I have. I've written about 40 papers that
7 primary concern the motor vehicle parts industry, and I've
8 visited about 60 plants in different parts of the world.

9 Q. Including in your capacity as an economist?

10 A. Yes.

11 Q. I'd like to show you what's been marked as Union
12 Exhibit 8.

13 MR. DeCHIARA: Your Honor, do you need a copy?
14 It's Professor Helper's report. I have an extra if you like.

15 THE COURT: I thought I had it.

16 (A pause in the proceedings.)

17 THE COURT: I have it. Okay.

18 Q. Professor Helper, attached to the back of Union
19 Exhibit 8 is what appears to be your CV. Do you see that?

20 A. Yes, I do.

21 Q. And is that a correct and accurate account of
22 your professional and academic positions and activity and
23 publications?

24 A. Yes.

25 Q. And on pages 19 through 23 of the CV, there's a

1 list of publications. Is that a listing of your scholarly
2 publications?

3 A. Yes, it is.

4 Q. To what extent do those scholarly publications
5 concern the auto parts industry?

6 A. Almost all of them have something to do with the
7 automotive parts industry.

8 Q. On paragraph 2 of your report, you say you are a
9 research associate of the MIT International Motor Vehicle
10 Program. Can you tell us what that is?

11 A. Yes, it's a group of researchers around the
12 world that does research on issues of interest to the
13 international motor vehicle industry, and we are funded in
14 large part by motor vehicle companies from around the world.

15 Q. You also say you're a research associate of the
16 National Bureau of Economic Research. Can you tell us what
17 that is?

18 A. Yes, it's a group of empirical economists. It's
19 headed by Dr. Martin Feldstein, who was an adviser to
20 President Reagan and other presidents, and you have to be
21 invited to join. They hold a number of conferences every
22 year.

23 Q. And you're a member of that?

24 A. Yes, I am.

25 Q. Have you ever before served as an expert witness

1 in any type of proceeding?

2 A. Yes. In two cases. One, most recently was
3 Delphi on behalf of UAW. Before that, I served as an expert
4 on behalf of management in a case where a salesperson alleged
5 that he had won a contract with GM and then was dismissed by
6 the company so that they wouldn't have to pay him a promised
7 bonus; and then my testimony was to look at the overall
8 organization of the company, to two of the plants, to talk to
9 management and workers there, and to make the point or, what I
10 found was that in fact, the entire company, the performance of
11 the entire company was responsible for winning that contract
12 with GM. It wasn't an individual person.

13 MR. DeCHIARA: Your Honor, I would move to have
14 Professor Helper qualified as an expert in organizational
15 economics and in the U.S. auto parts industry.

16 MR. BENNETT: No objection, your Honor.

17 THE COURT: Received. I mean, qualified.

18 Q. Professor Helper, did you, looking back to Union
19 Exhibit 8, did you write this report?

20 A. Yes.

21 Q. And as far as you know, are all the statements
22 in the report true and accurate to the best of your belief?

23 A. Yes.

24 Q. And do you adopt them here as if they were your
25 sworn testimony?

1 A. Yes.

2 MR. DeCHIARA: Move the admission of Union
3 Exhibit 8.

4 MR. BENNETT: Your Honor, there is a great deal
5 of hearsay in Union 8. We'll cross on it. I think the court
6 can certainly weigh the ultimate value of the report on that
7 basis.

8 THE COURT: I'll keep my scale here.

9 MR. DeCHIARA: Your Honor, is it admitted?

10 THE COURT: It's admitted.

11 MR. DeCHIARA: Thank you.

12 (Union Exhibit 8, received in evidence, as of
13 this date.)

14 Q. Professor Helper, in your opinion, would it ever
15 make business sense for a firm in the auto parts industry like
16 Dana to pay its workers wages above the market level?

17 A. Yes, for three reasons. One is the, in the
18 motor vehicle parts industry, there's sort of three
19 characteristics that are important here. One is the capital
20 intensity of production; a second is the importance of
21 quality, and the third is the importance of just-in-time
22 production.

23 Q. Why don't you explain what those three concepts
24 are, beginning with capital intensity.

25 A. So, in a company like Dana, downtime is very

1 expensive. So we have expensive capital equipment that's not
2 being used. We also have the services of a lot of engineers
3 and managers who, there's not being revenue generated to pay
4 their salaries if equipment is down. So that it becomes very
5 important to have skilled and motivated workers to keep that
6 equipment up and running.

7 And so what that means is, it can be sort of
8 penny-wise and pound-foolish to pay a slightly lower wage but,
9 as a consequence, get lower skilled workers who are unable or
10 unwilling to prevent downtime in the first place, or to
11 improvise and use their deep base of knowledge to get that
12 equipment back up and running very quickly.

13 Q. Would you describe Dana as a capital-intensive
14 operation?

15 A. Yes, I would.

16 Q. And why do you say that?

17 A. Based on my understanding of the nature of
18 production in that plant, based on my reading of the trade
19 press, discussions with experts in the industry.

20 Q. And what is just-in-time production?

21 A. So, just-in-time production is a method of
22 production that was perfected by the Japanese, actually
23 invented by Henry Ford. But the idea is that you use very
24 little inventory. And this has a lot of of benefits. You
25 save on working capital, you can identify quality problems

1 more quickly because you're using the parts right after they
2 were made. And it's been a policy that's been adopted by most
3 auto companies, particularly the most successful ones.

4 And again, this requires to be successful,
5 skilled and motivated workers, because you don't have a big
6 bank of parts that you can work off of if equipment goes down.

7 Q. And does Dana use just-in-time production?

8 A. They do. In a number of their plants, they make
9 multiple deliveries to their customers every day. And they
10 are trying to, as part of their improvement plan, trying to
11 increase their ability to both reduce inventory and to
12 increase their percentage of on-time deliveries.

13 Q. And how does a firm's use of just-in in-time
14 production relate to its compensation policy or how should it
15 relate to its compensation policy?

16 A. Well, so, just-in-time again places a great
17 premium on worker skill to avoid downtime in the first place,
18 and second, to respond quickly and creatively if there is
19 downtime.

20 And again, you're more likely to find workers
21 who are willing and able to do that if you pay a higher wage.

22 Q. To what extent do firms in the auto parts
23 industry compete with each other based on the quality of their
24 products?

25 A. It's very, very important. And a firm whose

1 quality is too low will not even be invited to bid on a
2 product.

3 Q. How demanding are the automakers regarding the
4 quality of their suppliers' products?

5 A. Incredibly demanding. In a couple of examples,
6 one is that, I guess the best one is that in many cases, if a
7 company, a supplier ships one bad part, the automaker will
8 reject that entire part. So at that point the supplier will
9 be required at his own expense to send workers to that plant,
10 sort through the parts, figure out which ones are good and
11 which ones are bad. The company then will get a black mark
12 against it, make it more difficult to win future business.

13 Q. Can you tell us how demanding the Japanese
14 automakers are in terms of qualities, the quality of their
15 suppliers' products and the American automakers?

16 A. In the past, the Japanese have been much more
17 demanding. This gap, the quality gap, at least as measured,
18 say, by the JD power surveys, has narrowed. So the Americans
19 are approaching the Toyota and Honda requirements, but both of
20 them are quite stringent.

21 Q. Why have the American automakers become more
22 demanding of quality over time?

23 A. Customers, final consumers like us, demand it.
24 We're much more likely to pay, to buy a car that has a good
25 reputation for reliability.

1 Q. Let's talk about the consequences that could
2 result if a supplier supplies defective parts to an automaker.

3 Could there be financial penalties or warranty
4 costs?

5 A. Yes. And this actually has been an issue for
6 Dana, that there has been a charge-back. If a part failure
7 that a consumer finds in the field can be shown to be the
8 result of a faulty part supplied to -- by a supplier, that
9 supplier will be charged for that warranty cost, which can be
10 many times the original cost of the part.

11 Q. How could making a defective delivery affect an
12 auto supply company's ability to win new business?

13 A. It could dramatically hurt it. It might not
14 even be invited to bid in the first place.

15 Q. How does the importance of quality in the
16 industry relate, if it does, to a firm's compensation policy?

17 A. Again, it's important that workers have the
18 skill and the motivation to produce the correct parts.
19 Workers who are paid more have more skill, have more ability
20 to identify failure modes. Workers who are paid more stay
21 around longer, and thus are often exposed to more jobs and so
22 they can understand what it means if a bad part, say, comes to
23 them and they were previously employed in that supplying
24 department, they can identify, perhaps, early, the causes that
25 there's a problem, make it known, get that problem solved

1 quickly. So --

2 Q. What -- I'm sorry.

3 A. -- so it's very important.

4 Q. To what extent is there improvement of the
5 production processes in the auto supply industry?

6 A. It's very important. There's lots of
7 competitors in the industry, and keeping ahead is a very
8 important thing, so always changing, always introducing new
9 products, introducing what look like minor improvements can
10 have a huge impact on quality of -- and profitability of a
11 company.

12 Q. Have you ever seen the phrase, "Flawless
13 launch"?

14 A. Yes. It's in, it appears a number of times in
15 the Dana turnaround documents as something that Dana must do
16 to successfully emerge from bankruptcy.

17 Q. What is your understanding of what a flawless
18 launch is?

19 A. Well, one of the best ways to make profits in
20 this industry is to have a new product, a product that other
21 companies can't supply. So if an automaker wants to get it,
22 they have to get it from you, so that gives you a lot more
23 bargaining room on price.

24 In order to get that product out of prototype
25 and into mass production is quite a severe challenge. What

1 you need to do is move from small batches to large batches.
2 It places a premium, again, on worker skill and motivation.
3 Workers -- we don't have -- there's not a script, there's a
4 lot of problems that are going to evolve, perhaps unexpected,
5 that parts don't fit in the way that was designed, workers
6 need to improvise, to understand problems, to make linkages
7 perhaps across departments.

8 And the quicker this can happen, the quicker
9 that a company can move from the prototype stage to the mass
10 production stage, the faster that they can, or the longer
11 period of exclusivity they are going to have before they are
12 imitated by other competitors.

13 Q. What effect is there on the quality of a
14 company's work force if it pays above the market wage?

15 A. They are going to be able to draw from a, the
16 top part of the skill distribution. And they are also going
17 to be able to keep workers who become experienced. They also
18 will achieve higher motivation by workers, either due to
19 loyalty, a kind of passive, a carrot reason, or on the other
20 hand, workers will not want to lose a job that pays so well,
21 and so they will work hard for that reason as well.

22 Q. And what impact would there be on Dana's current
23 work force if it cuts pay to well below market levels?

24 A. Well, I think we might see some of the best
25 workers quit because they will be able to find better jobs.

1 Some of the existing workers, I think it's a problem, you
2 know, we can all imagine if we had to take a significant pay
3 cut, that we have car payments and house payments that are
4 predicated on a certain level of income. If all of a sudden,
5 there's a lower level of income to make that, there's, people
6 are going to be preoccupied with financial worries, and
7 perhaps less focused on thinking of new ideas in the shower or
8 whatever that will improve the company.

9 Q. Do you have any view or information about
10 whether Dana will be able to attract skilled and committed
11 workers at the starting rate of \$11.05 an hour?

12 A. I think it would be unlikely. And maybe here's
13 a good time for me to kind of give a picture of what it is
14 these workers do.

15 We may think sitting here that what a blue
16 collar worker does is, you know, push a button on a machine
17 and the same button every twenty seconds, year after year, for
18 twenty years. That's very much not what these workers do. So
19 just to give an example of, say, an assembler, this is an
20 assembler at Fort Wayne doing the center section axle
21 assembly, each one of these assemblies is slightly different,
22 that they need, the finished part needs to meet tolerances of
23 one one thousandth of an inch. If it doesn't meet such
24 tolerances, it's going to suffer in terms of noise, vibration,
25 harshness, durability, and could even cause safety problems.

1 And as a result, the worker has to insert shims into this
2 assembly that are different for each one, because the
3 tolerances are so sight. So there's a lot of judgement that's
4 involved. There's also new products that come along and new
5 products that would be made in a rotation, so they are not
6 doing the same job every day, day after day. That's just one
7 example.

8 Q. Did you have your deposition taken by Dana in
9 this case?

10 A. I did.

11 Q. Do you recall being asked in your deposition
12 what auto parts company you believed was most closely
13 comparable to Dana?

14 A. Yes. I said American Axle.

15 Q. Why did you say that?

16 A. For a variety of reasons, include that Professor
17 Wachter lists them as a competitor to a number of the plants,
18 also, it's a company that Dana benchmarks in its goals for
19 profits.

20 Q. Have you made any effort to determine what wages
21 are paid by American Axle to its production employees?

22 A. I did. I spoke to someone in the UAW research
23 department. The UAW represents the workers at American Axle.

24 Q. And what did you learn?

25 A. I --

1 MR. BENNETT: Objection, your Honor, it's pure
2 hearsay. If they want to put it in through somebody in the
3 UAW, if they want to give us some documents that actually
4 relate to us, it wasn't in the report, it's pure hearsay.

5 THE COURT: I'll allow it.

6 MR. DeCHIARA: Thank you.

7 Q. What did you learn?

8 A. I learned that 85 percent of the workers at
9 American Axle are under the master agreement with the UAW and
10 they make a wage of \$27 an hour, plus benefits. So the wage
11 alone is \$27 per hour.

12 Q. How can American Axle compete and succeed paying
13 that kind of wage?

14 A. Well, they have very high operational
15 effectiveness. So their defect rate has declined dramatically
16 in recent years to the point where -- this is according to a
17 presentation made by Mr. Dauch, the chairman and CEO, to
18 stockholders or to stock analysts.

19 What he shows is that currently, American Axle's
20 defect rates are about 25 parts per million, so that means for
21 every million parts that American Axle is supplying to its
22 customer, less than 25 have a problem. So it's a remarkable
23 achievement. And Dana's defect rates are seven to ten times
24 what American Axle's are. So one example of how, with better
25 operations, you can offset the cost of high wages.

1 Q. To what extent does your academic work include
2 interviewing workers about their work?

3 A. Quite frequently, as I mentioned, I've been to
4 about 60 plants. Typically in those plants visits, I will
5 talk to workers, ask them what they do, ask them the training
6 that they've received, ask them what happens if there's a
7 quality problem, et cetera.

8 Q. In preparing your report in this case, did you
9 interview any individuals with experience working at any of
10 Dana's plants?

11 A. I did.

12 Q. And did these individuals have experience
13 working in the plants themselves?

14 A. Yes, they did.

15 Q. Who were these individuals?

16 A. So I talked to union officials at Auburn Hills,
17 Lima, Henderson, Kentucky, and Fort Wayne, Indiana.

18 Q. And apart from having personal experience as
19 workers in the plants, were there any other way in which they
20 would have been familiar with the work processes in the plant?

21 A. Well, in many cases, they have been there for a
22 long time, so twelve years in the case of the Lima shop chair
23 and over 20 in the case of the Fort Wayne shop chair. It's
24 also, besides their personal experience working in these
25 plants, it's their responsibility to represent workers in a

1 variety of areas of the plant.

2 Q. What sorts of questions did you ask them?

3 A. Well, I asked them a variety of objective
4 questions. So, what are the duties of workers in this plant,
5 give me some examples. Tell me what the conditions are like.
6 Walk me through, now, okay, so the part arrives at their
7 station, what do they do next? Is there heavy lifting? Do
8 they need to wear protective equipment? How long of a
9 training process does it take to do this job? Do they do
10 setup with the machines as well as operation, et cetera.

11 Q. How do these types of questions compare to the
12 types of questions you would ask a worker if you were doing an
13 academic study?

14 A. They are the same.

15 Q. In your view, is it appropriate to look at broad
16 BLS occupational categories like assembler to determine the
17 market wage for Dana's production workers?

18 A. No, it's not.

19 Q. Why do you say that?

20 A. There's a broad variation in this category or in
21 all of these categories. And in my report, I have an example
22 of a non-automotive plant that I visited that assembled
23 plastic panels for office equipment.

24 And in this plant, the workers just kind of --

25 Q. Was this a plant in the auto industry?

1 A. This was not a plant in the auto industry. It
2 was assembly for office equipment. And so they just sort of
3 snapped some panels together. There was no pressure to
4 produce just in time, the workers could learn just by
5 observing each other, there wasn't particularly dangerous
6 machinery, so it's very different, say, from the job of the
7 assembler that I just described where the worker's exercising
8 judgement and each assembly is slightly different.

9 Q. In your view, how did Dana's production workers
10 who are in the assembly occupational category compare to, in
11 terms of skill, to other workers throughout the economy who
12 were in the same occupational category?

13 A. They'd be at the upper end.

14 Q. What about Dana workers who are in the machine
15 operator category, can you tell us anything about that and how
16 they might compare to other workers in that category
17 throughout the economy?

18 A. Yes. Professor Wachter used a category out of
19 the BLS data for workers who operate machines. In fact,
20 workers at Dana don't just operate machines. With the
21 exception of tier 2 workers, all the incumbent workers both
22 operate and set up their machines. And setup is a much more
23 skilled operation for a variety of reasons.

24 First of all, if the machine is set up wrong, no
25 good parts can result, so it's sort of garbage in, garbage

1 out. So it's very crucial. There's a lot of tight
2 tolerances, a lot of adjustments that need to be made, and
3 this is also something that varies quite substantially from
4 product to product. So there's a lot of variation and a lot
5 of skill and judgement required to do the setup.

6 Q. Do Dana's production workers review quality
7 control charts or read blueprints?

8 A. Yes, they do. They also prepare quality charts,
9 so they are responsible for taking measurements of parts, and
10 noting whether or not those parts are trending out of the
11 specification, and if so, to take action to stop that.

12 Q. Do they do inspections?

13 A. Yes, they do.

14 Q. How up to date is the equipment at Dana's
15 facilities?

16 A. It varies. Some of it is quite new, some of it
17 is quite old. Some of it's forty to fifty years old.

18 Q. And what significance, if any, does that have in
19 your mind?

20 A. So, the 40- to 50-year-old equipment tends to
21 require a lot of judgement and so, for example, the shop chair
22 at Lima was telling me about how, you know, maybe machine 1,
23 you can get to know your machine, you know, sort of day in and
24 day out. You know, maybe many of us here think, engineers can
25 know everything. But that's actually not true. You really --

1 there's a great deal of knowledge to be gained by having a
2 worker who lives with this machine day in and day out, knows
3 how it sounds when it's running right, knows how it sounds
4 when it's not running right, operate that.

5 With these older machines, again, giving this
6 example of, so maybe there's machine 1, and machine 1 is --
7 runs good for half an hour but then, you've got to dial it
8 back because it heats up and it's going to make parts that are
9 too big; whereas machine 8, it's finicky at the beginning so
10 you've got to get it running, but once you get it running, you
11 never want it to stop. You want to find somebody to cover for
12 you on your breaks, et cetera. So that's the kind of
13 knowledge that it takes to really keep these machines up and
14 running.

15 Q. Does Dana need workers who have the skills to do
16 more than one job in the plant?

17 A. It's quite beneficial. Dana, particularly in
18 their heavy truck area, runs a wide variety of parts. And if
19 you have a worker who only knows one job, and that part's not
20 running that day, that worker will be idle. So if you have
21 workers that are cross-trained, can do a variety of jobs,
22 you're going to have better utilization of your workers.
23 You're also going to have better and quicker diagnosis of
24 quality problems because they are going to have seen, perhaps,
25 will know what generated that failure mode.

1 Q. What about working conditions? How in your
2 judgement do Dana's workers compare in terms of working
3 conditions to others in the broad assembly or machine operator
4 BLS occupational categories?

5 A. In many cases they are worse. So the BLS
6 language for describing the machine operator category talks
7 about, that typically, the jobs are done in well-ventilated
8 clean climate controlled areas. And that is not true for many
9 of the jobs at Dana, so -- and also involve only moderate
10 lifting.

11 So for example, the gear carrier line at Fort
12 Wayne, you have workers who are, as the shop chair put it,
13 dressed to do battle. They've got aprons, rubber gloves,
14 spats up to their knees, helmets, goggles, they are bathed in
15 this cutting fluid that's continually operating to keep the
16 parts cool and lubricated.

17 These parts weigh about 80 pounds each. They
18 make 280 parts a shift, and lift each part four times.
19 Meanwhile, they are doing precise measurements on each part.
20 So it's a very, very tough job with -- done in very difficult
21 conditions.

22 Q. Tell us about the heat treat.

23 A. So heat treat -- so this is in the category of,
24 I think, such workers, so these workers don't just inspect.
25 They also do heat treating where they are lifting, again,

1 parts weighing from ten to twelve pounds, up to 40 pounds. So
2 they may lift several tons over the course of their shift.

3 And meanwhile, they are making precise
4 measurements and, because they are near these very hot ovens,
5 the temperature can be over a hundred degrees.

6 Q. What is a compensating differential?

7 A. This is a term from economics that just makes
8 the point that if you're going to ask workers to work in worse
9 working conditions than another employer, you're going to have
10 to pay them more to attract them to your job.

11 Q. So the market wage of those individuals would be
12 higher?

13 A. Yes.

14 Q. In your view, in determining what compensation
15 it should pay to its current employees, should Dana take into
16 account the cost of the retiree life and health benefits it
17 pays to its current retirees?

18 A. No, it should not.

19 Q. Why do you say that?

20 A. Well, one of the main lessons that we teach or
21 that I teach when I teach business economics is that the
22 profit-maximizing rule is marginal revenue equals marginal
23 cost. And if you include costs that are not marginal costs in
24 your pricing, you're going to be leaving money on the table
25 that you could, by lowering your price to the marginal cost,

1 you -- or excuse me, lowering your estimate of costs to your
2 marginal cost, you're going to pick up new business that's
3 going to make, enable you to make a contribution toward
4 reducing that sum cost to the retiree benefits.

5 So I think this -- it's just a very standard
6 economic principle that, you know, set marginal revenue equals
7 marginal cost. In decisionmaking about future pricing, future
8 work, you do not take into account sum costs.

9 Q. And are the cost of life and health insurance
10 for retirees what you call a sum cost?

11 A. Yes, those are costs that were agreed to in the
12 past. So regardless of how many future workers Dana hires,
13 those costs aren't going to change. I mean, just to kind of
14 see what this might look like, suppose Dana laid off all but a
15 few of its workers, it would look like that burden, that fixed
16 burden divided by a small number of workers, look like those
17 workers cost you millions of dollars. That's obviously not
18 true.

19 Q. In your view, are the pay cuts that Dana is
20 proposing in its Section 1113 proposal necessary for its
21 successful reorganization?

22 A. No.

23 MR. BENNETT: Objection, your Honor. Objection
24 if she's going to give a legal definition on this subject.
25 She's certainly not qualified to do that.

1 MR. DeCHIARA: Your Honor, I wasn't seeking a
2 legal definition.

3 Q. In your view, are the pay costs that Dana is
4 proposing necessary for it to be a successful company in the
5 future?

6 A. No. I mean, as an economist, I worry that they
7 may actually be counterproductive. We're talked about a
8 variety of reasons why that might be so, that pay cuts would
9 lead qualified and highly skilled workers perhaps to quit,
10 because they can now find better employment somewhere else,
11 make it difficult to employ new workers, meaning that perhaps
12 there will be more downtime as a result, lower quality, less
13 just-in-time production.

14 One thing I didn't actually say was, the
15 importance of downtime, that if you shut down an assembly
16 plant in the auto industry, it can cost ten thousand dollars a
17 minute to that customer in terms of the ability to -- you've
18 lost the ability to sell a highly profitable car. And it's a
19 big deal. And so actually at Auburn Hills, about four or five
20 months ago, in fact, the Toledo plant was in fact shut down
21 and this was a reason to call out both the president of Dana,
22 high officials of Chrysler. So it's an extremely important
23 issue. And I worry that these pay cuts could be penny-wise
24 and pound-foolish.

25 MR. DeCHIARA: Thank you. I have no further

1 questions.

2 CROSS-EXAMINATION BY MR. BENNETT:

3 Q. That little part at the end before call of the
4 president, that's from the newspapers someplace?

5 A. This is from the shop chair at Auburn Hills.

6 Q. Okay. Just to start with, you were here for
7 Professor Voos' testimony?

8 A. Yes, I was.

9 Q. And you heard her testify about Dana's
10 compensation levels are below market at present?

11 A. Yes.

12 Q. Let's just go to your declaration. It's the
13 Union Exhibit 8. You have it in front of you in your existing
14 binder. I have a little more information including your
15 deposition here.

16 (Handing document to witness.)

17 A. Okay.

18 Q. It's either tab A in the cross-examination
19 binder, which may already be in front of you. Are you there?

20 A. Yes.

21 Q. Paragraph 45 in the conclusion?

22 A. Yes.

23 Q. You say, "Dana has had for many years a
24 high-wage policy." Do you see that?

25 A. Yes.

1 Q. Do you believe that's true today?

2 A. What I meant there was, they paid a higher wage
3 than average for the U.S. economy.

4 Q. Okay. Do you think that that's a condition that
5 exists today?

6 A. Yes.

7 Q. Okay. Now --

8 A. Excuse me, higher wage to production workers
9 than in the U.S. economy.

10 Q. Okay.

11 A. Yes.

12 Q. Fair enough. You provided a declaration in
13 Delphi?

14 A. I did.

15 Q. And you used that declaration to prepare your
16 report in this case, is that right?

17 A. Um, when there were similar facts that needed to
18 be responded to, Professor Wachter's declaration, I used my
19 Delphi declaration, yes. When the facts were different, I
20 modified, or I used different words.

21 Q. Okay. You have that Delphi declaration on your
22 word processor?

23 A. Yes, I do.

24 Q. And you used some of the same phrasing from that
25 original Delphi report for this report, correct?

1 A. Yes.

2 Q. And you had some notes from the Delphi case that
3 you reviewed as part of your preparation of the opinion in
4 this case; is that right?

5 A. Um -- I'm not sure that I did.

6 Q. Well, you did have your deposition taken in this
7 case, correct?

8 A. Yes.

9 Q. You have that in front of you. It's in the very
10 front of your book.

11 At page 25, line 6 there, you refer to your
12 notes on Delphi. You say you reviewed those notes on Delphi
13 in connection with this case, is that correct?

14 A. Oh, just to look at American Axle, yes.

15 Q. Okay. So you did have some notes on Delphi.
16 You looked at those for purposes of this case, correct?

17 A. Actually, this was in my expert report. I
18 wasn't as precise as I might have been, but in my expert
19 report, there is a mention of Delphi.

20 Q. Okay. You did give a deposition in the Delphi
21 case, is that right?

22 A. Yes, I did.

23 Q. And that did explore the bases for your opinion
24 in that case, is that right?

25 A. Yes.

1 Q. And you didn't ignore the bases for your opinion
2 in that case when you put together your opinion in this case,
3 did you?

4 A. Didn't -- that's com -- are you allowed to ask
5 your question that way?

6 Q. Let me put it to you this way: Your experience
7 is cumulative, isn't it? You compartmentalize the projects
8 that you work on, put them on the shelf and forget about them
9 after you have that experience, do you?

10 A. That's true.

11 Q. Okay. And it is fair to say that your
12 experience in Delphi, the information that you gathered in
13 Delphi to some extent is relevant to your opinion in this
14 case, is that right?

15 A. Yes.

16 Q. And the background of your opinion in Delphi,
17 that was the subject of examination in your deposition in that
18 case; is that correct?

19 A. I believe so, yes.

20 Q. And you don't know of any reason physically
21 why -- that transcript hasn't been burned, has it?

22 A. I believe not.

23 Q. It exists someplace, correct?

24 A. I believe so.

25 Q. You don't know any physical reason why it

1 couldn't have been given to us, do you?

2 A. I do not.

3 Q. Okay. Now, let's talk about the information
4 that you have about the plants, okay?

5 In the Delphi case, you did conduct visits of
6 some of the plants, is that right?

7 A. I did.

8 Q. And your view is, it's always best to see things
9 with your own eyes to reach conclusions as a scholar, correct?

10 A. Where are you quoting from?

11 Q. I'm asking you right now, right here, is that
12 your view?

13 A. I believe that you're quoting from something,
14 isn't that true?

15 Q. Is it your view, Dr. Helper, that if you want to
16 reach conclusions as a scholar, the best thing is to see
17 things with your own eyes? Yes or no? Please.

18 MR. DeCHIARA: Your Honor --

19 THE COURT: If you're making some kind of
20 objection to the examination, it's overruled. I direct you to
21 sit down.

22 MR. DeCHIARA: I was just going to make a
23 suggestion, but --

24 THE COURT: No, the questions are being asked
25 very, very cautiously and correctly. And the witness, if she

1 doesn't understand, can say so. And if she wants to dally
2 back and forth with the examiner, I'll let that happen.

3 Just listen to the question.

4 A. I would agree with that, yes.

5 Q. Okay. If you want to understand something in
6 your view, you go to the source, correct?

7 A. Yes.

8 Q. In this case, unlike Delphi, you didn't do any
9 tour of the plants, correct?

10 A. Let me explain. I did speak for about seven
11 hours with a number of different plant officials on the phone.
12 I've also visited plants that use similar processes. I've
13 seen machining plants. I've seen various types of assembly,
14 I've seen heat treat. So I'm familiar with a variety of these
15 processes.

16 Q. Dr. Helper, did you go to plants in this case?

17 A. I did not.

18 Q. Thank you. The people that you talked to about
19 the conditions of the plants were union officials, correct?

20 A. Yes.

21 Q. There were two union officers from Fort Wayne,
22 correct?

23 A. Yes.

24 Q. There was one union officer from Lima, correct?

25 A. Lima, yes.

1 Q. You did not talk even to union people
2 representing any of the other facilities, correct?

3 A. No -- well, I talked with someone from
4 Henderson, Kentucky, and from Auburn Hills.

5 Q. You don't mention that in your report, do you?

6 A. Those happened after I finished my report.

7 Q. The seven hours that you spent, that was with
8 the people at those two facilities, correct?

9 A. I believe so, yes.

10 Q. Okay. You certainly didn't talk to any
11 management representatives, correct?

12 A. That's true.

13 Q. You are not a human lie detector, are you?

14 MR. DeCHIARA: Objection.

15 A. No, but I believe, when I ask objective
16 questions, I mean, you know, it seems to me that the workers
17 say that the part weighs 80 pound, it weighs 80 pounds. If
18 they say they make 280 parts per shift, they make 280 parts
19 per shift.

20 Q. Do you have some unique ability to discern when
21 people are lying to you that the rest of the world doesn't
22 have?

23 A. I have my experience from visiting sixty parts
24 plants, from doing these sorts of interviews many times in the
25 past, and knowing how to ask questions so that I get objective

1 answers.

2 Q. You do recognize that the union representatives
3 who spoke to you had an agenda in the case, correct?

4 A. I did. And I couched my questions very
5 carefully to make sure that, to the best I could, I avoided
6 that agenda.

7 Q. You do know that the union representatives who
8 spoke to you were trying to make a case that they should be
9 paid high wages and benefits, correct?

10 A. Does that mean that they --

11 THE COURT: Answer the question. Answer the
12 question.

13 A. I believe that's so, but I don't believe that
14 that influences their answers about how many parts per shift
15 they do, what the temperature is in the plant, et cetera.

16 Q. Another source of information that you used was
17 a union website called Unionsrule.com, correct?

18 A. I consulted that in the performance of my
19 research.

20 Q. You thought that union website was a good source
21 of data, correct?

22 A. No. I merely, the way that came up in my
23 deposition was that you found it in my notes. This was a
24 unions website that I was informed about in the course of my
25 telephone conversation. I wrote it down in my notes, which

1 you had, and then you asked me about it.

2 Q. Okay. This "going off to battle" thing, that's
3 from some description from a union officer, is that right?

4 A. Yes, it is.

5 Q. You don't have any pictures that you actually
6 looked at, do you?

7 A. No, I do not. But I have seen workers dressed
8 to do similar types of jobs, so this struck me as a reasonable
9 description.

10 Q. Okay. You didn't do some comprehensive
11 questionnaire of the workers across all the different plants,
12 did you?

13 A. Asking each worker individually? No, I did not.

14 Q. Okay. In terms of comparability studies, you
15 would agree with me that, in setting a wage rate, a
16 comparability study is a useful piece of information?

17 A. It's a useful piece of information if it's done
18 correctly and supplemented with other pieces of information,
19 yes.

20 Q. It gives a sense of what other employers are
21 paying, correct?

22 A. Yes.

23 Q. It gives a sense of what alternative
24 opportunities are available to workers, correct?

25 A. Again, if it is done carefully, and actually

1 does look at the skills of the workers who are involved in
2 that. And so, for example, I think you'd want to take into
3 account exactly what kind of assembly we're talking about.
4 You want to take into account industry -- industry in this
5 case, motor vehicle parts -- matters because it's subject
6 to -- work in this industry is subject to a variety of
7 additional stresses. So that just-in-time production creates
8 stress. The pressure for quality --

9 Q. Doctor, could you try to focus on my question?

10 A. I am explaining my answer about why it's
11 important to have a correct comparability analysis.

12 Q. Let me try it this way:

13 In your deposition, were you asked this question
14 and did you give this answer at page 61:

15 "Question: Why do you want to know that?

16 "Answer: It gives a sense of what the available
17 opportunities, alternative opportunities available to workers
18 might be."

19 You'd say that's correct?

20 A. Page 61?

21 (Witness perusing transcript.)

22 A. Yes. So there I'm -- yes.

23 Q. And you'd agree that sooner or later in setting
24 a compensation scheme, you're going to have to do some form of
25 comparability analysis, correct?

1 A. I'd say that would be a useful piece of input.
2 I would want to supplement it with a variety of other pieces
3 of input. Employers adopt different production recipes. So
4 for example, not all employers in the motor vehicle parts
5 industry have workers both operate and set up their machines.
6 So it would be important to make be sure that, if you're going
7 to do that, that you didn't compare them incorrectly to
8 workers who only operated.

9 Q. Let me try it again from your deposition in a
10 simpler form. Page 66. Were you asked this question and did
11 you give this answer:

12 "Question: Sooner or later you're going to do
13 a comparability analysis, correct?

14 "Answer: Yes.

15 Did you give that testimony?

16 A. Yes.

17 Q. Okay. In this case, you haven't done any
18 analysis that amounts to a comparability study, correct?

19 A. I've done a number -- I have actually
20 investigated as to the wages of direct competitors of Dana.
21 As I testified, I learned that the wages at American Axle are
22 \$27 per hour.

23 Q. Oh, let's talk about American Axle just for a
24 second. That's not in your report; is it?

25 A. No, it came out as a result of your question at

1 my deposition.

2 Q. And you haven't produced any notes from whatever
3 you got from the United Auto Workers on that subject, correct?

4 MR. DeCHIARA: Your Honor, I would represent we
5 did provide reliance materials to the company on that last
6 Friday.

7 MR. BENNETT: This is Dauch material? This is
8 some statement from American Axle that actually shows
9 something different from what she testified about.

10 MR. DeCHIARA: It was an e-mail that contained
11 about three or four documents that were sent to the company.
12 I don't have the e-mail.

13 THE COURT: Is there a motion before me?

14 MR. BENNETT: There is a motion actually to
15 preclude or strike the prior testimony.

16 THE COURT: I'm granting it.

17 MR. BENNETT: Thank you, your Honor.

18 THE WITNESS: I believe there's an Excel
19 spreadsheet --

20 MR. BENNETT: There's no question pending, your
21 Honor.

22 Q. Your method in this case was to critique
23 Dr. Wachter's comparability study, isn't that correct?

24 A. Yes. And I did obtain an Excel spreadsheet from
25 the UAW research department which I believe that you have.

1 MR. BENNETT: Move to strike if that's
2 reference, again, to American Axle.

3 THE COURT: I don't know if it's a reference,
4 but it's certainly not responsive to your question. Your
5 motion is granted.

6 MR. BENNETT: Okay.

7 Q. At least in setting up your expert report, no
8 part of your analysis involved direct review of comparator
9 companies, correct?

10 A. That's correct.

11 Q. You would agree, would you not, that generally
12 low quit rates are associated with high compensation? Isn't
13 that true?

14 A. High compensation can be one cause of low quit
15 rates. It's not the only cause. One cannot infer if one sees
16 a low quit rate that therefore, compensation is high.

17 Q. Were you asked this question in your deposition
18 and did you give this answer, page 90:

19 "Question: Would you agree that generally,
20 relatively low voluntary quit rates are associated with high
21 compensation?

22 "Answer: Other things held equal, yes."

23 Was that your testimony?

24 A. Yes, I believe it's the same as what I just said
25 because of the "other things held equal" qualifier.

1 Q. Okay. You would agree, would you not, that the
2 auto supply industry is not healthy financially?

3 A. I would agree that many firms in the auto parts
4 industry are in trouble.

5 Q. You would agree that, since 1999, at least 36
6 auto parts makers and a couple of vehicle haulers have sought
7 bankruptcy protection, correct?

8 A. I don't have reason to doubt that.

9 Q. And you have no reason to doubt that there will
10 be additional bankruptcy filings related to the auto parts
11 industry, correct?

12 A. I don't have a crystal ball regarding that.

13 Q. Professor, I'm asking --

14 A. I don't know.

15 Q. -- you whether you have a reason to tell the
16 Court, "I think it's over, no more bankruptcies in this area."
17 Is that your testimony?

18 A. I'm saying I am not sure one way or the other.

19 Q. You've been studying the industry for twenty
20 years and you can't tell the Court whether you think the
21 bankruptcy wave is over in the auto supply industry, is that
22 your testimony?

23 MR. DeCHIARA: Objection, asked and answered.

24 THE COURT: Overruled. It's asked in a
25 different way.

1 He's asking you about trends, do you see any
2 trends?

3 THE WITNESS: I believe that there's going to be
4 difficult times in the auto industry for a while, for American
5 producers, yes.

6 Q. Okay. Move to a different subject. Talking
7 about national wages, in doing a comparability study, you'd
8 agree that you can't just pick an employer that is physically
9 closest to the employer in question, correct?

10 A. I'm not sure what you mean by "pick."

11 Q. Well, if you're going to do a comparability
12 study, you're going to say, what do other employers pay in the
13 way of compensation as compared to the employer in question,
14 you don't just walk down the road and go to the next employer,
15 "Hey, how much are you paying your workers?" That's not a
16 good comparability study, is it?

17 A. Well, I think a comparability study should
18 include a variety of elements; and one of those elements
19 should be, what are nearby employers paying, because those are
20 the employers that are going to be competing for workers in
21 that area. So that is one factor that should be considered.

22 Q. Well, you would agree that to do a proper
23 comparability study, you need to understand something about
24 the overall supply and demand for labor, correct?

25 A. Overall supply and demand for labor in -- well,

1 it would need to be appropriately qualified. You'd need to
2 understand where you're getting the workers from that you want
3 to hire. The auto parts industry, the blue collar workers in
4 the auto parts industry, that's not a national market.

5 Q. Dr. Helper, let me ask you whether you were
6 asked this question in your deposition, did you give this
7 answer? Page 67:

8 "Question: Why would you want to do that?

9 "Answer: Well, let's say that the plant is a
10 large employer compared to the work force in the town. You
11 might want to, need to, understand something about what the
12 overall supply and demand for labor situation looks like."

13 Did you give that testimony?

14 A. I'm sorry, where are you?

15 Q. Page 67. If you look on the left side, there
16 are little lines there. Starts at question at line 8.

17 A. Yes, so again, I'm saying that you need to take
18 into account multiple factors.

19 Q. Okay. Now, you have not studied trends in
20 equalization of compensation at the national level in the
21 manufacturing sector, correct?

22 A. No. I do know that there are remaining
23 differences in compensation by region in manufacturing. So
24 the levels of compensation remain different.

25 Q. Well, were you asked this question in your

1 deposition and did you give this answer, page 68, line 23:

2 "Question: Do you see some trends towards
3 equalization in manufacturing sectors where plants are being
4 relocated?

5 "Answer: I haven't looked specifically at
6 that."

7 Wasn't that your testimony?

8 A. Yes, and above, I said, "The fact that when you
9 look at the data, even quite recent data, you still see large
10 differentials, that suggests that equalization has not
11 occurred."

12 Q. Okay. And you haven't looked at longitudinal
13 data trends in terms of nationalization of compensation, isn't
14 that true?

15 A. I have not. I think that the major point that's
16 important here is that the differential remains.

17 Q. Okay. Your observation, however, is that wages
18 in industrial states have not grown in recent years, isn't
19 that true?

20 A. Yes.

21 Q. And you would agree that there's been downward
22 pressure on wages in industrial states, correct?

23 A. Yes.

24 Q. And that was caused in part by loss of
25 manufacturing jobs in those areas, correct?

1 A. Yes.

2 Q. That was caused by plants closing?

3 A. Yes.

4 Q. And that was caused by plants closing in one
5 location and then opening in other locations, correct?

6 A. Yes. Despite that, the differential remains.

7 Q. Not quite my question, Doctor. I would like to
8 try to maintain some order in asking you questions, and trying
9 to get answers to my questions.

10 You could agree --

11 MR. SIMON: Your Honor, given Dr. Wachter's
12 tendency yesterday continually to cast his answers as he chose
13 to cast them to deliver the message he chose to deliver, it
14 comes with ill grace for that exchange to have occurred.

15 MR. BENNETT: Well, I appreciate the tag team
16 approach to this. I thought Mr. DeChiara was my --

17 MR. SIMON: I made a general observation and not
18 an objection.

19 MR. DeCHIARA: I defer to my senior partner for
20 his apt remarks.

21 THE COURT: The remarks can be stricken from the
22 record. They are inappropriate.

23 MR. BENNETT: Okay.

24 Q. You have seen a movement of employment in the
25 auto parts industry to the south, correct?

1 A. Yes.

2 Q. And that has had an effect on unionization rates
3 in the auto parts industry, correct?

4 A. Yes.

5 Q. And the unionization rates have fallen as a
6 result, correct?

7 A. Yes.

8 Q. And the result in part of that is compensation
9 rates in the auto parts industry have fallen, correct?

10 A. I'm not sure that they've fallen. The rate of
11 increase has certainly slowed.

12 Q. Did you give this testimony in response to these
13 questions at page 161:

14 "Question: One of the bullet points there
15 says, 'Massive shift to the south.' What were you referring
16 to there?"

17 MR. DeCHIARA: I'm sorry, what line are you on?

18 MR. BENNETT: Page 161 --

19 THE COURT: Line twelve -- line 13.

20 Q. Line 13, the actual question is:

21 "Question: One of the bullet points there
22 says, 'Massive shift to the south.' What were you referring
23 to there?"

24 "Answer: There's a movement of employment in
25 the auto parts industry to the south.

1 "Question: Has that had any effect on
2 unionization rates in the auto parts industry?

3 "Answer: Yes, they have fallen.

4 "Question: Has that had any effect on
5 compensation rates in the auto parts industry?

6 "Answer: I believe so, yes.

7 "Question: Those have also fallen?

8 "Answer: Yes. Well, relative to other -- I'm
9 not sure. I don't think there's been an absolute shift, an
10 absolute fall, but there has been a decline in growth."

11 Was that your testimony?

12 A. Yes, I believe that's the same as what I just
13 said.

14 Q. Now, outsourcing, you know something about that,
15 correct?

16 A. Could you define "outsourcing"? There's a
17 variety of definitions out there. I'm not sure which one
18 you're using.

19 Q. Doctor, please. You've worked in this area.

20 A. Now, and there's two different terms --

21 THE COURT: Well then, why don't you give us
22 your definition --

23 THE WITNESS: Okay. So "outsourcing" can mean
24 the process of a firm using suppliers that are not financially
25 dependent on that company, so using financially independent

1 companies as their suppliers. They can also be used as a
2 synonym for offshoring, which is sending work to companies
3 that are located in other parts of the world. So I can
4 actually testify to both. I was just unclear as to what you
5 were referring to.

6 Q. Okay. You'd agree that the dollar value of
7 imports from outside the United States of auto parts has
8 steadily increased over the past 15 years, correct?

9 A. Yes, I would agree with that. But there's also
10 a substantial amount of auto parts production in -- that
11 remains in the U.S.

12 Q. That is a trend that you do see continuing,
13 correct?

14 A. Yes. It's -- yes.

15 Q. And you would agree that competitive pressure
16 from China, India and other low-wage regions is applicable to
17 tier 1 auto supply firms, correct?

18 A. Um -- I'm not sure what you mean by
19 "applicable." I'm sorry, I'm not trying to be difficult, but
20 I'm having trouble understanding the -- there's a variety of
21 ways --

22 Q. Is it your view, Doctor, are you telling the
23 Court the auto supply industry has been affected by this
24 increase of auto parts being imported into the United States
25 but it has had no effect on tier 1 suppliers? Is that what

1 you're telling this court?

2 A. I'm saying that there has been some effect.
3 That effect is mitigated by the fact that tier 1 suppliers, or
4 particularly Dana, supply parts that are quite heavy and bulky
5 and they are expensive to ship long distances and thus, it
6 remains a reason to locate parts plants near assembly plants.

7 Q. And you would agree, would you not, that
8 purchasing policies by the U.S. big three automakers have led
9 to a great deal of cost pressure on suppliers, correct?

10 A. Yes, that's true.

11 Q. And you would agree that suppliers increasingly
12 feel that the only way to meet the pressures is to source from
13 China themselves, correct?

14 A. That's a trend that many suppliers have felt in
15 the thing that -- the document you're referring to, that was a
16 quote from suppliers. That's not -- I don't feel that that is
17 the only strategy that suppliers can use to respond. And
18 there are many other such strategies that suppliers can use.
19 You don't have to fight low wages with low wages. You can
20 fight low wages with high operational effectiveness, high
21 productivity.

22 Q. Your point is, they feel the pressure to move to
23 places like China for sourcing, but you think there's a better
24 way to do it, right?

25 A. Yes.

1 Q. Okay. You would agree that, given stagnant
2 demand for cars and continuing productivity improvements, it
3 is true that employment in the industry would probably shrink,
4 we're talking about the auto parts industry, even in the
5 absence of global competition, isn't that true?

6 A. Yes.

7 Q. And that's a trend you see continuing, correct?

8 A. Yes.

9 Q. And your research suggests that the trend to
10 offshoring, that's not likely to stop in the future, correct?

11 A. Um -- it's not likely to stop. It's not clear
12 how much -- we're seeing some push-back from that, a number of
13 companies that have gone, rushed over there, have found that
14 it didn't work quite as well as they thought it would. So
15 we're seeing some companies move back.

16 Q. Dr. Helper, were you asked this question in your
17 deposition and did you give this answer at page 145:

18 "Question: Does your research suggest that the
19 trend to offshoring has stopped?

20 "Answer: It does not, no."

21 Did you give that answer?

22 A. Yes, I believe that's consistent with what I
23 just said. I said that it, the trend has not stopped but it
24 may -- it may be slowing.

25 Q. You agree that there have been large layoffs at

1 a number of auto supply firms, correct?

2 A. Yes.

3 Q. And you haven't done a study on the degree of
4 labor oversupply in the auto supply industry, correct?

5 A. I have not. I believe that framing a study in
6 such a way would not be a good idea. As I've testified, I
7 believe that there's a variety of measures that one needs to
8 use; that the auto supply industry is not one industry, it
9 does not draw on a single labor market. When we're talking
10 about Dana, we're talking about machinists that require a year
11 of training, talking about people who do combination heat
12 treat, inspection, so it would need to, if we're going to do a
13 study that would be useful, it would need to consider not just
14 industry but skill levels within occupation, location, et
15 cetera.

16 Q. Dr. Helper, let's both try to help the Court
17 figure out the limits of your knowledge, okay? All right?

18 A. Yes.

19 Q. I'm asking you now to tell the judge whether you
20 have research that you can share with the judge as to whether
21 there is an oversupply of labor in the auto parts industry.
22 Yes or no, can you help the judge on that?

23 A. Yes, I believe that I can help the judge by
24 pointing out that there are a variety of different labor
25 markets that are involved, a variety of different skills that

1 are required to do, put together parts in a car. There are
2 plastic parts in a car, there are forged parts, there are
3 parts that require extremely complicated assembly. Knowing
4 that there are lots of people who are unemployed just
5 generally doesn't tell you about the --

6 THE COURT: The question is, do you have
7 research on this?

8 THE WITNESS: I don't have research. I have a
9 framework.

10 Q. Thank you very much. You would agree,
11 Dr. Helper, that original equipment manufacturers in making
12 sourcing decisions do look at the direct labor costs of their
13 suppliers, correct?

14 A. That's a small part of what they look at, but on
15 occasion, that is something they do look at, yes.

16 Q. Okay. Just in terms of productive capacity,
17 production capacity, you do see overcapacity for production in
18 the auto supply industry today, correct?

19 A. Yes.

20 Q. That's a situation that you expect to continue
21 into the future, correct?

22 A. Yes.

23 Q. You'd expect that to continue for five years or
24 more, correct?

25 A. Yes.

1 Q. And you would agree, would you not, Dr. Helper,
2 that employees, workers who are working in high-paid
3 manufacturing jobs in the rust belt, when they are laid off,
4 find it difficult to find equivalent jobs with similar wages,
5 correct?

6 A. Yes, many of them do.

7 Q. And that's also true in the automotive --

8 MR. DeCHIARA: Your Honor, I think the witness
9 had not completed her answer.

10 THE COURT: Let her finish.

11 Q. Go ahead.

12 A. Yeah, I think that again, you'd need to look at
13 exactly what skills we're talking about and what parts of the
14 country, and -- yeah, there's a differential there. Some
15 workers are going to have a very hard time, some are going to
16 have a less hard time.

17 Q. That's a condition that you also think applies
18 to the automotive industry, correct? Workers with these
19 high-paid manufacturing jobs, they get laid off, they have
20 trouble getting equivalent jobs.

21 A. Yes. It's going to be less true for workers at
22 a company like Dana who have skills in blueprint reading,
23 quality control, inspection, et cetera, than for some worker
24 that is just a kind of run-of-the-mill assembler.

25 Q. Now, let's talk about the efficiency wage

1 theory. That is a central part of what you are attempting to
2 share with the Court, correct?

3 A. My, the point I want to make with that is that
4 wages can affect the level of productivity. And so therefore,
5 when wages are cut by X percent, we're not going to see a fall
6 in costs by that equivalent X percent. There's a variety of
7 theories that lead to that result. Efficiency wage is one
8 such theory.

9 MR. BENNETT: I'm going to move to strike that
10 as totally not responsive.

11 THE COURT: Granted.

12 Q. Doctor, a central part of your report is the
13 efficiency wage theory, true?

14 A. Yes.

15 Q. Thank you. The efficiency wage theory, you will
16 agree, is a phenomenon that does not necessarily apply to all
17 employment relationships, correct?

18 A. The efficiency wage theory states that a higher
19 wage may lead to cause higher productivity. In some
20 circumstances, that effect may be smaller.

21 Q. Doctor, at page 33 of your deposition, were you
22 asked this question and did you give this answer:

23 "Question: Does the efficiency wage phenomenon
24 apply to all employment relationships?

25 "Answer: Not necessarily."

1 Was that your testimony, Doctor?

2 A. Yes, I gave a more careful answer just now.

3 Q. Okay. You would agree also that there is
4 research that suggests that the efficiency wage theory may not
5 apply to employment relationships, correct?

6 A. Um -- I believe you're referring to the -- maybe
7 you could refer me to what you're, the basis of your question.

8 THE COURT: He just asked you a question. You
9 can answer it. If you don't --

10 THE WITNESS: Yes, I believe there's some
11 research that argues that, for example, piece rates.

12 Q. It's not all one-sided, is it? It isn't that
13 every theorist and everyone who has ever studied this says,
14 "Oh, yeah, you're right, efficiency wages, that's it," right?

15 A. The Nobel Prize committee gave the Nobel Prizes
16 in this, for this theory. Every labor economics textbook is
17 going to have --

18 THE COURT: I think the question is, is there
19 unanimity in it?

20 THE WITNESS: There is not unanimity, the --

21 THE COURT: Thank you.

22 Q. Thank you. Now, the effectiveness theory, as
23 applied to Dana, you talk about in your expert report,
24 correct?

25 A. Yes.

1 Q. Okay, let's get that out. Tab A in the cross
2 binder, Exhibit 8, that's your expert report, right?

3 A. Yes.

4 Q. Let's go back to the end there, the conclusion.
5 Are you there, paragraph 45?

6 A. Yes.

7 Q. Starts, "Dana has had for many years a high wage
8 policy." We talked about that. Correct?

9 A. Yes.

10 Q. And the rest of it says, "Like successful
11 high-wage employers, Dana should adopt policies that are
12 complementary to this strategy, such as adding up-to-date
13 equipment, cutting supervisors, implementing employee
14 involvement programs to take advantage of the highly senior
15 work force that have attracted. One could argue that Dana has
16 done the high-wage strategy without the complementary policies
17 and that they need to add the complementary policies and then
18 cut wages less."

19 That is part of your efficiency wage theory as
20 applied to Dana; correct?

21 A. Yes.

22 Q. And that's what you're recommending the judge
23 should consider in making a decision in the case, correct?

24 A. Yes.

25 Q. And those three things that you talk about, at

1 least, adding up-to-date equipment, cutting supervisors, and
2 implementing employee involvement programs, you refer to those
3 as essentially a transformation of Dana; correct?

4 A. Yes, that would be a first best policy for Dana
5 to adopt, yes.

6 Q. And it is fair to say that your suggestion of
7 adopting this transformation, you don't have any way to tell
8 the Court how long that's going to take?

9 A. There are other companies that have adopted such
10 transformation and those companies would be a good guide, I
11 think, to estimate what might be the experience of Dana.

12 Q. Could you answer the question as to whether you
13 can tell the Court if Dana does what you suggest, add
14 equipment, get rid of supervisors, add some employee
15 involvement program, how long is that going to take to achieve
16 some net benefit to the company?

17 You can't tell the Court that, can you?

18 A. Well, I think in companies that have done
19 similar things, a couple of years is a reasonable estimate.
20 It's not clear, I mean, Dana is also proposing a
21 transformation of a different type, with moving a lot of
22 equipment and workers overseas, which is also a
23 time-consuming, expensive proposition.

24 As I said, this is a first best policy. Even if
25 Dana doesn't adopt these, my argument remains that cutting

1 wages as Dana proposes is a counterproductive policy.

2 Q. Okay. You do know, and you can tell the Court
3 that to do what you suggest, to adopt this transformation,
4 don't cut wages and benefits, but do this transformation
5 thing, that's going to cost some money, correct?

6 A. Yes.

7 Q. And that's for new equipment, new technology and
8 computers, that's going to cost some money, right?

9 A. Yes, there will be some savings from not having.
10 But offsetting savings.

11 Q. And it's going to take some additional training
12 of workers to do this transformation thing that you suggest,
13 correct? And that's going to cost money.

14 A. Yes, there would be some savings from fewer
15 supervisors, from fewer errors, fewer -- less scrap, less
16 requirement of setting up supply chains in new plants
17 overseas.

18 Q. And this transformation thing also involves
19 changing work routines. And those sorts of changes cost some
20 money, too; correct?

21 A. They may or may not. Some companies find that
22 when they listen to their workers, that often great savings
23 result. I think you can point to the Nummi plant, when it was
24 a General Motors plant, it was a plant that belonged to
25 General Motors, had the highest grievance rate in General

1 Motors, deeply problematic quality and productivity, was taken
2 over by Toyota and quickly became, with almost exactly the
3 same work force, became one of the highest quality plants in
4 the Toyota system, and certainly the highest quality plant in
5 the General Motors system.

6 Q. Doctor, are you suggesting to the Court, having
7 never visited any of the plants and having talked to union
8 officials from two of the plants, that you can compare Dana's
9 situation to something that happened at a GM facility where it
10 was taken over by the Japanese and there was some great
11 transformation, and tell the Court that means that we can get
12 the transformation that you're talking about? Is that your
13 testimony?

14 MR. DeCHIARA: Your Honor, I believe her
15 testimony, she spoke to individuals from more than two plants.

16 MR. BENNETT: Well, given that --

17 THE COURT: I -- I'm waiting for a motion to
18 strike because her whole response was totally unresponsive to
19 the question. But nevertheless, it's in the record, no motion
20 was made, and the explanation and the follow-on questions were
21 appropriate.

22 Q. Okay. Are you telling the Court you can give
23 some actual comparison between Dana plants and this
24 GM/Japanese automaker situation and say, "I know that means we
25 can do whatever happened in their transformation," is that

1 what you're saying?

2 A. I'd remind you that I've worked on the auto
3 parts industry for twenty years. I have visited plants around
4 the world. I've seen this happen. There's a variety of
5 literature that discusses this. So it's not just my work but
6 I'd refer you to books such as The Machine that Changed the
7 World by Womack, Jones and Roos, books by Tom Kolkin, so I'm
8 suggesting, I think that this is not an unusual proposal.

9 Q. Doctor, isn't it basically a guess from your
10 perspective, since you haven't done any study sufficient to do
11 that kind of comparison, isn't that true?

12 A. Yes.

13 Q. And you would agree that it is generally quite
14 difficult to get manufacturing firms to change their
15 industrial processes, isn't that true?

16 A. The general barrier is management. And so I
17 believe that if management commits itself to such a
18 transformation, the unions would go on board.

19 Q. Doctor, could you answer my question? Is it
20 difficult to get manufacturing firms to change their
21 industrial processes?

22 A. Yes, but I'm suggesting that the reason is
23 something that's under the control --

24 THE COURT: That wasn't the question.

25 Q. Is it hard?

1 A. Yes.

2 Q. To get industrial --

3 THE COURT: She's already answered the question.

4 Go on.

5 MR. BENNETT: Great.

6 Q. Let's just look at this year, 2007, what's
7 coming up here. You'd agree, would you not, that 2007 is
8 going to be another challenging year for the automotive
9 industry, isn't that true?

10 A. Yes.

11 Q. You would agree that the auto industry in the
12 United States is in trouble, correct?

13 A. The U.S. automakers, yes, are.

14 Q. They are in financial trouble, correct?

15 A. Yes.

16 Q. And you would expect them to be mired in
17 trouble, financial trouble for the foreseeable future,
18 correct?

19 A. Yes, for GM, Daimler-Chrysler, yes.

20 Q. And that's going to cause serious trouble for
21 auto suppliers in the United States for the foreseeable
22 future, isn't that through?

23 A. Yes.

24 MR. BENNETT: Nothing further, your Honor.

25 (Continued on following page.)

1 REDIRECT EXAMINATION BY MR. DeCHIARA:

2 Q. Dr. Helper, is the efficiency wage or -- to what
3 extent is the efficiency wage theory a widely accepted theory
4 in the economics world?

5 A. I believe it is a widely accepted theory as a
6 theory, that this narrow theory of the efficiency wages is
7 quite widely accepted, so any labor economics textbook is
8 going to have it in it. The general idea of causal
9 relationship between wages and productivity is even more
10 widely accepted.

11 Q. You said something, and I didn't catch it,
12 because I don't think you finished your statement, about the
13 Nobel Prize when you were talking about efficiency wage. What
14 were you saying?

15 A. The Nobel Prize for the year, I believe it was
16 2001, was awarded to George Akerlof and Joseph Stiglitz in
17 large part for their work on efficiency wages.

18 Q. Do you agree with Professor Wachter that
19 efficiency wage theory does not apply to unionized work
20 settings?

21 A. I do not agree with that statement.

22 Q. Can you explain why you don't agree with that?

23 A. The key idea behind efficiency wage theory is
24 that the wage is lifted to above market -- above-market
25 levels. A union is one way that that can happen. And so when

1 those wages are higher, you're likely to see the mechanisms
2 that I've discussed at work, so you're likely to see greater
3 loyalty and dedication to the job and you're likely to see the
4 ability to hire from the higher parts of the skill
5 distribution.

6 I can actually provide some evidence on that
7 from the tier 2 workers that Dana has in fact already hired
8 that, according to the shop chair at Lima --

9 MR. BENNETT: Objection, your Honor, hearsay.

10 THE COURT: I'll allow it.

11 A. The 75 --

12 THE COURT: The weight, based upon the
13 cross-examination with respect to the source of this hearsay,
14 is somewhat unweighted with respect to this testimony.

15 MR. DeCHIARA: Your Honor, can the witness
16 continue?

17 THE COURT: She may continue.

18 A. So they hired 75 workers, 75 tier 2 workers in
19 of January. Less than half of those workers remained on the
20 job. In Auburn Hills, the shop chair reported that there was
21 greater absenteeism among those workers, and just sort of a
22 general reduced commitment to the job. So I think we can
23 already see at the tier 2 wages, which aren't as low as the
24 ones Dana proposes to pay, a diminution or some evidence of
25 diminution in the quality of the workers they are able to

1 attract.

2 Q. You testified on cross that a small part of what
3 U.S. automakers look at in choosing suppliers are the direct
4 labor costs of their suppliers. To what extent do they look,
5 do the automakers look at the quality and reliability of their
6 suppliers?

7 A. That's far more important. Another thing that
8 they look at is, is there a unique product? Is there
9 something we can get from this company that we can't get from
10 anywhere else?

11 So one reason that Auburn Hills is growing is
12 that they have a product that no one else can make. And
13 that's -- that gets back to the flawless launch way of
14 achieving profitability with new products made reliably and
15 with high quality as a way of competing.

16 Q. We've heard some discussion, including in your
17 testimony, about increased competition in the auto parts
18 industry. What significance, if any, does that have on your
19 view that Dana needs a skilled and motivated work force to be
20 successful?

21 A. I'm sorry, could you repeat the question?

22 Q. Sure. To the extent there's increased
23 competition in the auto parts industry, what significance, if
24 any, does that have on your view that Dana needs a skilled and
25 motivated work force to be successful?

1 A. I think it's even more important. The
2 competition in the auto industry is based not just on price
3 but significantly on quality and delivery, as I outlined
4 before. And in order to get that high quality, that reliable
5 delivery, paying a bit extra for workers is a very sound
6 investment.

7 MR. DeCHIARA: Thank you.

8 Did you have further questions? Because I have
9 one statement I want to make for the record.

10 MR. BENNETT: Actually, I have one tiny
11 foundation thing I that I should have done at the very end.

12 RE CROSS EXAMINATION BY MR. BENNETT:

13 Q. Dr. Helper, could you get to tab E of your
14 binder. Are you there?

15 A. Yes.

16 Q. This is an October 11, 2004 news story?

17 A. Yes.

18 Q. And if you go to the very bottom there, there's
19 a quote from you.

20 A. Yes.

21 Q. You did give that quote to a reporter, isn't
22 that true?

23 A. Yes, regarding employment in manufacturing in
24 general. Yes.

25 MR. BENNETT: Your Honor, we'll offer Debtor's

1 212 and I believe the Court had taken a parallel excerpt of a
2 quote subject to connection. Here's the connection.
3 Obviously, she's here, and is confirming that she gave that
4 statement.

5 MR. DeCHIARA: Your Honor, we don't have any
6 objection to Dr. Helper's statement in the article. We would
7 object to the rest of the article coming in for the truth of
8 the matters asserted.

9 MR. BENNETT: I'm fine with that, your Honor.

10 THE COURT: Very well, it's received.

11 (Debtor's Exhibit 212, received in evidence, as
12 of this date.)

13 MR. DeCHIARA: Your Honor, the statement I
14 wanted to make for the record, you struck from the record
15 Dr. Helper's testimony about the wages paid at American Axle.
16 I'm not sure I had a chance to object on the record. I just
17 want to make the record clear that we do object to the
18 striking of that -- we do object to that ruling.

19 THE COURT: You have an exception. The ruling
20 stands.

21 MR. DeCHIARA: Your Honor, just for the record,
22 I was making clear that we object to that.

23 MR. BENNETT: We would ask in that connection,
24 if there is a basis, some actual documents related to American
25 Axle, we'd like to see that. It has not been produced.

1 MR. DeCHIARA: Your Honor, all I can say is that
2 on Friday, I received from Dr. Helper three or four documents
3 and they were -- there might have been an Excel spreadsheet,
4 there might have been an article. I can't tell you exactly
5 what they were, but there were three or four documents that I
6 received from Dr. Helper which I understood to be her reliance
7 materials on that subject. And I put them -- I forwarded the
8 e-mail with the attachments to Mr. Bennett.

9 MR. BENNETT: I think we're done, your Honor.

10 THE COURT: I think we are. Have another
11 witness? Thank you, Ma'am.

12 (The witness is excused.)

13 MR. SIMON: We've agreed, your Honor, to
14 terminate at the end of these two witnesses.

15 THE COURT: You have? Okay.

16 MR. BENNETT: I think we're done for today.
17 Unless the Court wants to --

18 MR. DeCHIARA: We don't have any witnesses
19 prepared to go forward today.

20 THE COURT: Are you prepared tomorrow morning?

21 MR. DeCHIARA: We are, your Honor.

22 THE COURT: 10 o'clock tomorrow.

23 (Time noted: 5:10 p.m.)
24
25

C E R T I F I C A T E

STATE OF NEW YORK)

: SS.

COUNTY OF NEW YORK)

I, DAVID LEVY, CSR, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify
that the foregoing proceedings were taken
before me on March 28, 2007;

That the within transcript is a true
record of said proceedings;

That I am not connected by blood or
marriage with any of the parties herein nor
interested directly or indirectly in the matter in
controversy, nor am I in the employ of any of the
counsel.

IN WITNESS WHEREOF, I have hereunto
set my hand this 2nd of April, 2007.

DAVID LEVY, CSR

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

Index No.
06-10354

DANA CORPORATION,

Debtors.

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March 29, 2007
United States Custom House
One Bowling Green
New York, New York 10004

EVIDENTIARY HEARING

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A P P E A R A N C E S (Continued):

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1 P R O C E E D I N G S:

2 MR. TAMBE: Good morning, your Honor.

3 THE COURT: Good morning.

4 MS. CECCOTTI: Good morning.

5 THE COURT: Good morning, Mrs. Ceccotti.

6 MS. CECCOTTI: The unions call Suzanne
7 Taranto.

8 S U Z A N N E T A R A N T O, called
9 as a witness, having been first duly sworn by the Notary
10 Public, Denise Nowak, was examined and testified as
11 follows:

12 MS. CECCOTTI: Your Honor I have your for
13 the witnesses convenience prepared a binder with Ms.
14 Taranto's Exhibit 3 and her supplemental deposition
15 declaration which is 43, and they are behind Tabs 3 and 20
16 behind the union's binder. This binder also contains one
17 other exhibit, Exhibit 44 behind Tab 21. And for the
18 witnesses convenience I wonder if I may approach and use
19 these while she is testifying as opposed to big binders; is
20 that okay with you?

21 MR. HAMILTON: I just need a copy of the
22 exhibit, not the declaration but whatever 44 is.

23 MS. CECCOTTI: All right.

24 MR. HAMILTON: Just tell me what 44 is.

25 MS. CECCOTTI: It's the Towers Perrin

1 memorandum.

2 MR. HAMILTON: Are you moving VEBA caps?

3 MS. CECCOTTI: Yes.

4 MR. HAMILTON: All right, let's go.

5 DIRECT EXAMINATION BY MS. CECCOTTI:

6 Q. By whom are you employed?

7 A. Milliman, Inc.

8 Q. And can you identify Milliman, Inc.?

9 A. Milliman is a large actuarial consulting
10 firm.

11 Q. What is your title?

12 A. I'm a consulting actuary.

13 Q. And what does a consulting actuary mean at
14 Milliman?

15 A. An individual who is identified as a
16 actuary, a member of the American Academy of Actuaries, and
17 also an individual who is certified to sign, that is to
18 deliver actuarial work product to clients with the approval
19 of Milliman.

20 Q. And what is your area of professional
21 expertise?

22 A. Employee benefits specifically pensions and
23 retiree health plans.

24 Q. And for how long have you been an actuary?

25 A. I've been an actuary since 1989. I have

1 worked in the field for 23 years.

2 Q. And you mentioned an organization called
3 the American Academy of Actuaries?

4 A. Yes.

5 Q. And you are a member of that organization?

6 A. The American Academy of Actuaries, yes.

7 Q. And as an actuary, are you subject to any
8 professional standards?

9 A. Yes. There are actuarial standards of
10 practice a code of conduct as well as a requirement by
11 Milliman my employer as the way I practice.

12 Q. And do you those use those standards day to
13 day at your work at Milliman?

14 A. Yes.

15 Q. Have you applied those to this case?

16 A. Yes, I have.

17 Q. Could you please turn to Union Exhibit 3
18 behind Tab 3 in your binder there and tell us what that
19 document is?

20 A. It's a declaration and expert report that I
21 filed with respect to the 1113, 114 motion.

22 Q. And in paragraph 1, you refer to 2 court
23 proceedings in which you have submitted testimony in the
24 past two years. Do you see that?

25 A. Yes.

1 Q. Can you just briefly describe those
2 proceedings?

3 A. Yes, I submitted testimony on behalf of the
4 UAW in the UAW and GM retiree medical litigation and
5 settlement. I submitted expert witness report as well in
6 the Ford matter with the UAW regarding retiree health.

7 MS. CECCOTTI: Your Honor, we would offer
8 Ms. Taranto as an expert in actuary science.

9 MR. HAMILTON: No objection, your Honor.

10 THE COURT: She is so qualified.

11 MS. CECCOTTI: Thank you, your Honor.

12 BY MS. CECCOTTI:

13 Q. Ms. Taranto, you described Milliman -- I'm
14 sorry, can you just give us a sense of the scope of
15 Milliman's practice?

16 A. Milliman has a number of practices. The
17 employees benefits practice health life and casualty
18 practices.

19 Q. And just order of magnitude in order of
20 size relative to the similar firms?

21 A. It's one of the largest actuarial
22 consulting firms in the US.

23 Q. And you've been retained by the UAW and the
24 USW in this case, have you not?

25 A. Yes, I have.

1 Q. In addition to the unions can you give us
2 an idea for of the types of clients for whom you provide
3 actuarial services at Milliman?

4 A. Yes, at this provide consulting
5 Taft-Hartley trust funds as well as a number of corporate
6 clients.

7 Q. And with respect to the actuarial services
8 concerning specifically concerning post retirement health
9 benefits, can you tell us more specifically what kinds of
10 services you pro perform for your corporate clients?

11 A. Yes. Primarily we are involved with the
12 measurement of liability for purposes of reporting those
13 liabilities on financial statements. We also provide
14 consulting services around benefits as well.

15 Q. Okay. Are your corporate clients asking
16 you to help them address their post retirement health care
17 obligations?

18 A. Yes, they are.

19 Q. In what way?

20 A. Well, many of them have asked us to assist
21 in managing those liabilities in understanding the reasons
22 why they are the size that they are. Others ask us to help
23 keep those liabilities in check or manage them going
24 forward. Many of them ask us to do that in such a way that
25 we do not impact the benefits, that is, to make the

1 liability smaller with minimal impact to the benefits.

2 Q. And have you had clients ask you to help
3 them eliminate their post retirement benefits for current
4 retirees?

5 A. Very few.

6 Q. So order of magnitude then in your work for
7 your corporate clients, can you break it down just again in
8 a relative since, among those who are asking you to range
9 the liabilities.

10 A. Most are asking us to help them manage the
11 liabilities.

12 Q. For the corporate clients that you may not
13 work on directly as Milliman, are you aware of to what
14 extent employers are asking for help in the same area from
15 Milliman?

16 A. In my experience most employers ask for
17 health and management.

18 MR. HAMILTON: Your Honor the question at
19 this point I question think the question was your Honor she
20 is asking her what she knows about other clients at
21 Milliman.

22 THE COURT: Is your objection as to form?

23 MR. HAMILTON: Yes, foundation.

24 THE COURT: Sustained.

25 Q. Do you know to what extent employers, other

1 than those for whom you are working directly are asking for
2 help managing their post requirements healthcare
3 liabilities?

4 A. Yes one of my responsibilities in Milliman
5 is to peer review the work of other actuaries although
6 those clients are not my clients I do have occasion to look
7 at their work and those clients do on occasion ask for help
8 in managing liabilities.

9 Q. So let's go back to some of the requests
10 that you get for your clients to help manage retiree
11 healthcare liabilities. And here I am asking specifically
12 about those clients who are providing retiree healthcare to
13 current retirees. Can you be a little more specific about
14 the nature of those requests; what are they asking you to
15 do specifically?

16 A. Yes. In many instances they are go asking
17 us to manage the liability by first reducing the overall
18 cost of health benefits. That is shrinking the size of the
19 by. And in other instances by looking at design changes or
20 other methods to manage or reduce the liability. We are
21 also asked to look at imposing cops on caps on that
22 liability; that is limiting the rate of growth of those
23 benefits.

24 Q. Let's talk about the caps concept. In fact
25 Dana has implemented -- or do you know whether Dana has

1 implemented caps with regard to its retiree post retirement
2 healthcare obligations?

3 A. Yes, it has.

4 Q. Could you please turn to Exhibit 43, which
5 should be behind the tab is labeled 20 because it
6 corresponds to our overall exhibits. And first of all can
7 you ask you to identify that document, please?

8 A. Yes, it's a.

9 MR. HAMILTON: Since I haven't been
10 provided a list of these, it takes us a few minutes to get
11 to sheets.

12 THE COURT: There's a larger binder that is
13 very easy to follow.

14 Do you have it?

15 MR. HAMILTON: What is 43?

16 THE COURT: 43 is the supplemental
17 declaration.

18 MR. HAMILTON: I have that, your Honor. He
19 have it, Mrs. Ceccotti.

20 MS. CECCOTTI: Thank you.

21 BY MS. CECCOTTI:

22 Q. Can you identify that document, Ms.
23 Taranto?

24 A. It's my supplemental declaration.

25 Q. And actually I'm going to ask you to turn

1 to turn to paragraph 3 of that document?

2 A. Yes.

3 Q. Which is on page 2. And I'm going to ask
4 you to go to the chart that's labeled summary of liability
5 by capped uncapped status. Do you see that?

6 A. Yes.

7 Q. Tell us what that chart represents these
8 please?

9 A. This chart outlines the liability
10 associated with union post retirement medical benefits.
11 The top of the chart labeled 2007 estimated APBO refers to
12 the present value of benefits or the financial statement
13 liability Dana records on behalf of UAW and USW retiree
14 health benefits. There are two categories of liabilities
15 portrayed. Grandfathered and non grandfathered.

16 This exhibit splits the liabilities between
17 those that are grandfathered or not subject to capping or
18 other limits and benefits; and those benefits that are
19 capped are non grandfathered that is subject to some
20 limitation in respect to growth. The total liability that
21 is capped is 66 percent for the UAW and 57 percent for the
22 USW.

23 Q. And by UAW and USW, just so we're clear, we
24 are talking about the retiree groups?

25 A. Correct, the benefits payable to retirees.

1 Q. And then at the next, the 2006 head count
2 section, can you just walk us through that, please?

3 A. Yes. The 2006 head count outlines the
4 number of employees so, so the number of retirees both
5 current and future that are either not subject to a cap,
6 that is grandfathered or subject to a cap or non
7 grandfathered, and the percentage of current and future
8 retirees there are subject to a cap or a limit is 512
9 percent for the auto workers and 46 percent for the steel
10 workers.

11 Q. Can you tell us with respect to the
12 relationship between what you've described as the
13 grandfathered or uncapped group and the non grandfathered
14 or capped group, can you say how the relationship between
15 those two groups would behave over time?

16 A. Yes, it's grandfathered group typically are
17 retirees who require prior to the mid 1990. They are an
18 older group of retirees and generally a closed group of
19 retirees; that is there will be no more retirees going into
20 this group. Over time we would expect that that liability
21 would decrease as benefits were paid out and participants
22 in that group died.

23 THE COURT: The subject matter here is it
24 all of Dana or is it only the 1113, 1114 motion.

25 THE WITNESS: This liability is both

1 current retirees and future retirees.

2 THE COURT: Is it for all of Dana or is it
3 only for the 1113, 1114 motion that's before the court.

4 THE WITNESS: It is.

5 THE COURT: Your numbers.

6 THE WITNESS: They are just the union. I'm
7 sorry.

8 MS. CECCOTTI: Just the UAW and USW portion
9 of the total.

10 THE COURT: Of the total of all Dana
11 employees are or of those that are subject to the 1113,
12 1114 collective bargaining motion?

13 MS. CECCOTTI: I think I understand your
14 question.

15 THE COURT: It's either a larger number or
16 a smaller number. I'm trying to find out whether you've
17 embraced everything or we are talking about the specific
18 subject matter before the court.

19 MS. CECCOTTI: Let me see if I can try to
20 ask the witness the question this way.

21 Q. Are the percentages here a percentage of
22 the total APBO number meaning for all of the retiree
23 healthcare obligations?

24 A. No, just the union.

25 Q. Just the total APBO attributable to the

1 unions?

2 A. Yes.

3 Q. Okay. So do you recall -- actually let's
4 go back actually to clarify that a little further for the
5 record. Let me take you back to paragraph 2 of Exhibit 43.

6 Ms. Taranto, let me go back. The 66
7 percent and the 57 percent, do they represent all of the
8 union represented retirees at all locations?

9 A. Yes.

10 MS. CECCOTTI: Does that help your Honor?

11 THE COURT: Yes, it does.

12 MS. CECCOTTI: I'm sorry, I didn't
13 understand your question myself.

14 BY MS. CECCOTTI:

15 Q. Ms. Taranto, do we know what the caps that
16 are described on page 2 here, do we know what the caps have
17 been worth to Dana?

18 A. Yes. It's been measured.

19 Q. And where have you shown that, if at all in
20 Exhibit 43?

21 A. Paragraph 4.

22 Q. Can we go there, please?

23 A. Yes.

24 Q. First of all, before we go there, the
25 figures that you have utilized here, can you tell us what

1 the source is? Let's just go back to 3 for a moment. The
2 course of your number here.

3 A. This is the calculated by Towers Perrin and
4 given to us in the data room.

5 Q. I'm sorry would you please proceed with
6 paragraph 34?

7 A. One of the analysis that we are we were
8 provided with through the data room was a calculation that
9 was made by Towers Perrin in 2005 as to the impact of
10 removing the caps on the liabilities associated with UAW
11 and USW facilities. Specifically, of the liability
12 calculated for all UAW and USW facilities, which was
13 determined by Towers to be just over one billion dollars,
14 the increase in the liability, were the caps not
15 implemented, would increase that liability to 1.65 billion
16 dollars or by 40 percent.

17 Q. And again, just so the record is clear
18 about your source for this particular analysis, can I ask
19 you to turn to the -- what's behind Tab 21?

20 A. Yes.

21 Q. And can you just identify for us that
22 document?

23 A. Yes, this is the October 12th, 2005 letter
24 from Towers Parrin turn titled removing VEBA caps.

25 Q. And the presentation that you described in

1 paragraph 4, how does that affect, how would it present
2 itself on Dana's financial statements?

3 A. The financial statements of Dana require us
4 to calculate liabilities, assuming medical inflation by
5 Dana capping their rate of growth of the benefits or
6 capping the amount that it pays towards retiree healthcare,
7 it limits the impact of future medical inflation on these
8 benefits, therefore the caps would decrease the liability
9 Dana records on its financial statements associated with
10 retiree medical benefits.

11 Q. And I think you mentioned this in your
12 direct testimony but I don't how direct it was, do you know
13 for how long Dana had caps with respect thereto?

14 A. They varied. There have been caps
15 negotiated as early as the mid 1990s and as recently as
16 within the past year depending on the location and the type
17 of benefit.

18 Q. Okay. Can we, sticking with the exhibit of
19 the caps can we turn to paragraph project five of your
20 declaration, and this is again Exhibit 43?

21 A. Yes.

22 Q. Have you had an opportunity to review the
23 testimony that Mr. Hoffmann gave regarding at least one
24 sentence in paragraph 5 of your declaration?

25 A. Yes.

1 Q. And if we look down the paragraph there,
2 there is a sentence that starts "Although the caps on
3 Dana's share" and I'm reading from the paragraph "although
4 the caps to on Dana's share of the post retirement
5 healthcare varied in amount by location, Dana has limited
6 its exposure to future medical inflation in all current
7 active employees many of its recent since the mid 90s
8 retirees." With respect to that sentence and Mr. Hoffman's
9 comments could you respond to his comments?

10 A. Yes.

11 Q. Go ahead, please?

12 A. Mr. Hoffman makes three points around the
13 caps. First that dental benefits are not subject to an
14 overall dollar limit. And although they are not subject to
15 an overall dollar limit, the annual benefits payable under
16 the plan are subject to a per participant limit. So
17 although technically not capped in terms of an absolute
18 dollar, benefits are capped by virtue of the fact that only
19 a certain amount of care and dollars can be spent by the
20 retirees.

21 The second point that Mr. Hoffman makes is
22 that there are some benefits have that are not capped. We
23 are aware that there's one location where the pre- 65
24 prescription drug plan are not subject to a cap although
25 the post 65 benefits are. And we believe there may be one

1 other location that is subject to -- where the prescription
2 drug benefits, but the rest of the drug benefits are
3 subject to a cap.

4 The third point Mr. Hoffmann makes is that
5 Dana, subject to the collective bargaining agreement,
6 determines the amount of money to charge its retirees in
7 places where there is a cap; specifically, Dana uses two
8 year old experience to determine the cost of the plan from
9 which it subtracts its limit that it will pay and
10 determines its retiree contribution.

11 The challenge with two your old data is
12 that to the extent there has been medical inflation, there
13 may be a higher true cost of the plan or a higher cost of
14 the plan that would, for example, be used in the actuarial
15 actuation. So that the column dollar amount of the cap
16 that Dana pays may not be the actual cost that Dana incurs
17 for the plan. Would an example help?

18 Q. I think an example would help. Could you
19 give us an example?

20 A. Sure. Let's say that the cost of a health
21 plan is a hull dollars and that Dana's cap is 50 dollars.
22 Were Dana in a to determine the retirees contribution as
23 the plan cost less the cap, Dana would be charging a
24 retiree 50 dollars. However Dana uses older claims data,
25 so for example, two years ago the plan play have cost 90.

1 Dana uses 90 less 50 dollars cap to calculate a retirees
2 contribution. And therefore essentially collects 40
3 dollars from the retiree or spends 60. The 60 dollars is
4 still a cap. It's a limit, it is just not the precise
5 dollar amount because of this methodology that Dana is
6 stating it collects.

7 Q. Okay, thank you.

8 Let's go now to Exhibit 3, your initial
9 declaration, and I'm going to ask you to take a look at
10 paragraph 9; and just ask you to summarize the conclusions
11 that you've reported in paragraph 9?

12 A. Yes, in paragraph 9 with we cite two
13 sources that demonstrate that although employers have made
14 changes to their post retirement medical benefits, there
15 are still a number of employers that maintain benefits and
16 have not eliminated them. Specifically a Kaiser study in
17 2005 indicated that about 60 percent of the employers with
18 more than 5 thousand employees still maintain retiree
19 medical coverage. And in a review of the S&P retiree
20 companies about 64 percent of them retain a million retiree
21 medical liability.

22 Q. Before we get to that, I'm going to ask you
23 a little about the S&P study that you've referenced there.
24 Could you describe that a little more for us?

25 A. Yes. Milliman internal research monitors

1 the financial statement of the S&P 500 with respect to its
2 benefits disclosures both pension and post retirement
3 medical, and makes that information available to its
4 consultants as an indication of trend and what's going on
5 with the market and with the business.

6 Q. And do you know in the review that you've
7 referenced here, do you know whether that was conducted?

8 A. It was conducted based on end of 2005
9 financial statements. So during the middle of 2006.

10 Q. Okay. With respect to the reference to
11 Kaiser, I have marked as Exhibit 61, a document I'll ask
12 you to identify. Could you identify that document?

13 A. These are excerpts from the Kaiser 2005
14 study.

15 Q. And let's just take a moment. I think we
16 had some of this with Dr. Mulvey, but could you describe
17 this Kaiser study for us?

18 A. The Kaiser is study is a large study of
19 employer health benefits that's conducted by the Kaiser
20 Health Foundation.

21 Q. And do you know how often that they do this
22 study?

23 A. It's an annual study.

24 Q. Can you tell us show us where in this
25 document we would find the source for the figure that you

1 present in paragraph 9?

2 A. It is on page 116, the exhibit is totaled
3 11.2. It's the third from the back in what you handed me.

4 Q. Okay. And that is a page entitled
5 percentage of firms offering retiree health benefits by
6 firm size reach and industry.

7 A. Yes.

8 Q. And you were referring to the 55 percent?

9 A. Correct.

10 Q. Now, you were not present in court for Dr.
11 Mulvey's testimony, were you?

12 A. Correct.

13 Q. Did you have occasion to review her
14 testimony with regard to -- withdrawn. Did you have an
15 opportunity to review a treatment of Dr. Mulvey's testimony
16 with regard to some comments she made concerning the state
17 and local government component of the firms that were
18 survived by Kaiser?

19 A. Yes, I did.

20 Q. Can you tell can you just the summarize the
21 point that she was making there?

22 A. The point that she made because that since
23 prevalence of retiree medical benefits plants among state
24 and local government's was high and they were included in
25 the survey that potentially impacted the valid 69 survey

1 with respect to employee prevalence of retiree health
2 plans.

3 Q. And do you recall her saying something
4 about the fact that the state and local government's do not
5 have to report post retirement health obligations?

6 A. Yes.

7 Q. Can you again just give us a flavor of her
8 observation there?

9 A. Her observation because was that the
10 prevalence was directly correlated to the fact that state
11 and local government employers had not yet had to measure
12 and report on an accrual accounting base or on a FASB 106
13 type basis, the liability of their retiree health benefits.

14 Q. Is he let's stop start with the composition
15 portion of her comments did can I ask you to go to the
16 front of Exhibit 61 and tell us what that section
17 represents entitled design survey and methods could you
18 tell us what information we would finds in that portion of
19 Exhibit 61?

20 A. This exhibit provides the background
21 information including the composition of the group of
22 employers included in the survey.

23 Q. So, if you can, please, using the seconds,
24 can you tell us how we would turn interpret the composition
25 information of the firms?

1 A. Yes. If we were to look at page 13, page
2 13 describes the characteristics of firms included in this
3 survey, it describes how many employers were in each
4 category and the relative weighting of that category in
5 determining the averages.

6 Q. So how would we take the information from
7 page 13 and relate that to the information that we were
8 looking at on page 116 with respect to the composition of
9 state and local governments?

10 A. Sure. If one was trying to determine how
11 much influence state and local governments had on the
12 results as a whole, one would look at the percentage
13 weighting given to each of those industries, which is the
14 third category described on page 13.

15 So, for example, in determining the
16 averages of the come posits and the 55 percent, its
17 relative weighting of industries for -- or the relative
18 weighting of state and local government in the industry mix
19 is 1.5 percent, which would contrast to say manufacturing
20 or retail, which is 6.7 or 6.5 percent respectively.

21 Q. Okay. Referring to the comment that you
22 described about the requirement or the lack of requirement
23 that state and local government's have to in some way
24 account for these obligations, do you agree with her
25 observation?

1 A. Yes.

2 Q. I'm sorry, that they don't have to
3 currently account for it?

4 A. Yes they are in the process of beginning to
5 have to account for them as a -- it's a faced approach for
6 recognition.

7 Q. Do you remember Dr. Mulvey stating that she
8 expected once that requirement is applicable that she would
9 expect the number of state and local governments over
10 go retiree health benefits to decrease?

11 A. Yes.

12 Q. Do you agree with that statement?

13 A. Yes.

14 Q. You do?

15 A. Yes, I do.

16 Q. Sticking with Exhibit 61 for a moment, let
17 me ask you to go to page 115; it's entitled Exhibit 11.1
18 percentage of all firms offering retiree health plans 1988
19 to 2005. Could you describe for us what's going on in this
20 page, please?

21 A. Sure. The bars on the page represent the
22 large firms large firms being defined as 200 or more
23 workers there offer retiree health benefits, and the graph
24 tracks that percentage from 1988 through 2005.

25 Q. Okay. So it looks like there's a drop

1 between 66 -- well, let me not characterize it in 1988 the
2 percentage that we see her is 66 percent, and then in 1991
3 we see that the percentage is 46 percent. Do you have a
4 view as to why, and then again we see in 1993 let me
5 complete the thought, the percentage further drops to 36.
6 Do you have a view concerning those relative percentages?

7 A. Yes, I do.

8 Q. Why don't you tell us what that is?

9 A. Sure. 1988 was prior to the advent of the
10 accounting standards that are currently in use today for
11 reflecting retiree medical benefits on company's balance
12 sheets and books. Specifically, prior to the requirement
13 by FASB, employers accounted for these benefits on a pay as
14 you go basis, simply recording the cash that they paid each
15 year for benefits for retirees.

16 The accounting standard required a change
17 in the methodology, from a cash basis to an accrual basis;
18 that is, employers needed to put the value of the benefits
19 on their books, and through their profit and loss
20 statements, as employees earned these benefits rather than
21 as they received them.

22 The general impact of FAS 106, which is
23 what this accounting requirement was called, was to
24 increase liabilities and to highlight the cost of the
25 benefits.

1 1991 was the next step in this measurement
2 period between not having done the analysis and
3 understanding the size of the liabilities, and
4 understanding the size of the liabilities, and many
5 employees appeared to eliminated those benefits prior to
6 the point in time where they had to recognize them on their
7 balance sheets. Most employers had to recognize these
8 liabilities between 1993 and 1994.

9 So in 1993 you see the impact of the what
10 the accounting standard on the employer decision to
11 continue the benefits.

12 Q. Okay. And what's actually you've discussed
13 this phenomenon, am I right, in your report as well?

14 A. Yes.

15 Q. And where have you included some opinion
16 about that?

17 A. That's paragraph 9 -- no, I'm sorry.

18 Q. I'm going to direct you to paragraph 13?

19 A. 13.

20 Q. And why don't you again, with reference to
21 page 115, which you relate the chart on this page on to the
22 opinion that you've expressed in that paragraph?

23 A. Yes. The opinion I expressed in the
24 paragraph is that the company's have following initially
25 putting these liabilities on their books have not had any

1 ongoing reaction from the financial community and have
2 essentially not recorded current challenges with respect to
3 these liabilities. Some have made changes, but the
4 accounting liabilities have been a that's right part of the
5 financial report reporting now foreclose to 15 years.

6 Q. So that what we see on page 115 after this
7 1988 to 1993 period that you described beginning with 1995
8 we see the liability going from 40 percent to, I guess to
9 33 percent in that range, correct?

10 A. Correct.

11 Q. Switching topics a little bit for the
12 moment, can you I ask you to -- take a look at paragraph 12
13 of your report. And can you summarize the opinions that
14 you've expressed there, please?

15 A. Yes. In implementing Medicare prescription
16 drug benefits, clear the government provided a subsidy to
17 employers who maintained their plan, specifically the
18 design of the program was facilitated employers maintaining
19 retiree health benefits and receiving government funding to
20 do so. And based on the Kaiser study we referenced
21 earlier, about 30 percent of large employers maintained
22 their health benefits and elected to take the subsidy from
23 the government towards those benefits.

24 Q. Does the first sentence of your paragraph
25 1, again, is that the opinion you are standing by here on

1 that?

2 A. Yes. The fact that a subsidy was available
3 to employers rather than the design of the current Medicare
4 program, was suggests the government's interest in
5 employers maintaining these plans.

6 Q. Now in your report you also talk about
7 something I call the concept of afford ability; is that
8 correct?

9 A. Yes.

10 Q. And we can see that in your report at
11 paragraph 14?

12 A. Yes.

13 Q. Could you please, again, summarize your
14 views on that?

15 A. Yes, in the work that I do generally
16 employers are cognizant of the affordability of changes
17 that they make in retiree health programs when they make
18 these programs. And in particular, design considerations
19 to recognize the impact, particularly to older retirees,
20 are included in many of the plan design changes we have
21 implemented and worked with employers on.

22 Q. Can you tell us some of the ways that
23 companies build in this feature or ask you to build this
24 feature into their design?

25 A. Yes. All else being equal, it is generally

1 my experience that the companies I work with would prefer
2 to change benefits that have not yet begun rather than
3 change benefits in effect today. For example, it is much
4 simpler to eliminate retiree health benefits for someone
5 who is not each employed yet and have them understand as a
6 condition of employment that those benefits would not be
7 available than is to eliminate benefits for someone who is
8 in receipt. Companies will choose to impact or limit these
9 benefits prospectively more frequently or preferably over
10 changing things in for current retirees.

11 Another way employers impact their
12 obligations is to cap their obligation. We talked about
13 this earlier. But to limit the rate of growth of these
14 benefits has significant financial impact beneficial to the
15 company because of the way we are required to project
16 liabilities and inflation less of a direct impact on the
17 employees in the short term.

18 Q. Is affordable only relate to affordable to
19 the company?

20 A. Afford ability to retirees is often
21 considered as well. Particularly in recognition that
22 planning for an additional expense is harder if you do not
23 have an income with which to save. Many of our employers
24 have facilitated savings vehicles in connection with
25 conjunction with a change in retiree healthcare to help an

1 employee accumulate pension funding in order to pay for
2 those benefits.

3 Q. Did the GM matter that you participated in
4 was the affordable concept evidence in the modified plan in
5 that case?

6 A. Yes, it was.

7 Q. Can you just describe that?

8 A. Yes. The GM settlement specifically
9 codified for its existing retirees a level of pension
10 income that marked an individual as able to afford the
11 changes that they were proposing and precluded individuals
12 below that level of pension income from having to be
13 subject to those changes.

14 Q. Are you familiar with Dana's Section 1114
15 proposal?

16 A. Yes.

17 Q. And why don't I describe your understanding
18 of the proposal?

19 A. For the most part the elimination of
20 retiree coverage for future and something retirees.
21 There's something some discussion of VEBA funding but it's
22 unclear as to exactly what that means.

23 Q. And how does that proposal, as you
24 understand it, fit into your experience with what employers
25 have been asking you to do in terms of helping them manage

1 their retiree obligations?

2 A. It is not a typical proposal.

3 Q. Why don't we go back to Exhibit 43,
4 supplemental declaration, and I'm going to ask you to look
5 at paragraph 7.

6 And can you describe what you are showing
7 in that paragraph?

8 A. Yes. Paragraph 7 compares the value on a
9 present practical value basis of the pension benefits
10 provided by Dana as various union locations to the value
11 provided by Dana of post retirement medical coverage to
12 those retirees at those locations.

13 Q. Why don't you walk us through what your
14 exhibit shows, please.

15 A. Yes. The exhibit compares, on an average
16 basis, the monthly pension amount at four selective
17 locations, and the value expressed as a present value of
18 those benefits to the retirees. So, for example, in the
19 UAW master plan, plan 3 at left most, the average retiree
20 receives a pension benefits of 42.72 a month that has a
21 present value of 48 thousand 500 dollars.

22 The next value present value of post
23 retirement medical is a value expressed on a financial
24 statement perspective on a per retiree basis. So the
25 liability that Dana records for those benefits divided by

1 the number of retirees. In the instance of the UAW master
2 plan, the value of the benefit is 78 thousand 600.

3 Q. And for each of the examples that you have
4 shown here, which are three other examples, correct but
5 that you haven't walked through but they are there. These
6 represent averages, correct?

7 A. Averages.

8 Q. I need to actually take you back to the
9 paragraph we talked about in your initial declaration.
10 Lets go to 11 in Exhibit 3?

11 A. Yes.

12 Q. And you reference here the S&P 500 review
13 is that the same review that the described earlier in your
14 testimony?

15 A. Yes it is.

16 Q. What about the 2005 Watson Wyatt study?

17 A. Watson Wyatt published a study in 2005 of
18 164 companies and their findings suggested that 14 percent
19 of the company's VEBA plan to eliminate the benefit for
20 future retirees or in the future, 6 percent plan to
21 eliminate for current retirees.

22 Q. Can you just describe what that study
23 showed, just versus what we were looking at when we were
24 looking at the Kaiser studies?

25 A. This study.

1 Q. As to what -- I'm sorry as to what it's
2 attempting to show there?

3 A. This study focused on intended design
4 changes for post retirement health plans. And although
5 there are there were a significant number of employers who
6 reported anticipating making changes and potentially cost
7 sharing type changes, there were few 6 percent employers
8 who were planning on simply eliminate go the benefits for
9 existing retirees.

10 Q. And can you just identify the Watson Wyatt
11 firm for us, please?

12 A. Excuse me.

13 Q. Can you identify the what's at and white
14 firm for us, please? Can you describe them?

15 A. Watson Wyatt worldwide actuarial firm one
16 of the largest.

17 Q. And you worked there for a while?

18 A. Yes.

19 Q. How long did you work there?

20 A. 16 years.

21 Q. I would actually like to -- I have marked
22 as Exhibit 60, the document that I will show you and ask
23 you to identify can you identify Exhibit 60?

24 A. It's the executive summary of the Watson
25 Wyatt study.

1 Q. Is this the study that's referred to in the
2 paragraph we were just discussing?

3 A. Yes.

4 Q. Can you tell us again where the numbers you
5 just testified to are?

6 A. Hang on a second. The figure for?

7 Q. Figure 4?

8 A. Figure 4 describes the for both current and
9 future employees the expectations of employers with respect
10 to changing retiree medical benefits.

11 Q. And just again, show us where we can find
12 the figures you were talking about?

13 A. Towards the middle of the exhibit in the
14 eliminate the benefit for post 65, 16 and 4, and eliminate
15 pre- 65.

16 Q. Okay.

17 MS. CECCOTTI: Can I have just a moment,
18 your Honor?

19 Your Honor, to the extent they were not
20 otherwise in the record, I would like to move for the
21 admission of Exhibits 3 and 43 at this time, which are the
22 two supplemental -- the declaration and the supplemental.

23 We have not received, as part of this the
24 scheduling order, we haven't received any indication that
25 there's an objection. But I just want to make sure the

1 record is clear that they are in evidence.

2 MR. HAMILTON: We have no objection.

3 MS. CECCOTTI: Okay, that's fine.

4 THE COURT: Received.

5 MS. CECCOTTI: Thank you.

6 (Whereupon, Union Exhibits 3 and 43 were
7 received in evidence as of this date).

8 MS. CECCOTTI: And then, as to the two
9 exhibits I've marked I would like to move those in as well.

10 MR. HAMILTON: Which ones?

11 MS. CECCOTTI: 60 and 61.

12 MR. HAMILTON: Yes, there's no objection.

13 THE COURT: Received.

14 (Whereupon, Union Exhibits 60 and 61 were
15 received in evidence as of this date)

16 MS. CECCOTTI: No further questions.

17 MR. HAMILTON: Your Honor, I have cross
18 examination binders. May I approach?

19 THE COURT: Sure.

20 (Handing)

21 CROSS EXAMINATION BY MR. HAMILTON:

22 Q. Ms. Taranto, my name is Robert Hamilton.
23 I'm with Jones Day representing the debtors in this case.

24 As I understand it, you've been at
25 Millennium for a short poured; about how long?

1 A. Two years.

2 Q. Before that you were at a private company,
3 right?

4 A. Yes.

5 Q. Which one?

6 A. I was at equitable.

7 Q. For how long?

8 A. About three years.

9 Q. Pardon?

10 A. About three years.

11 Q. And before that you were you at another
12 private company?

13 A. I was at Ingersoll Rand.

14 Q. For how long?

15 A. Two years.

16 Q. And before that where were you?

17 A. Watson Wyatt.

18 Q. Milliman, you have multi employer plans,
19 trusts and corporate clients; is that correct?

20 A. Yes.

21 Q. You personally?

22 A. Yes.

23 Q. Approximately how many clients have you
24 provided services to at Milliman for the past two years?

25 A. About 30.

1 Q. 30 clients. And in about those 30, how
2 many were large corporations more than 200 employees?

3 A. About 15 or so.

4 Q. And you gave some description in your
5 opening direct about the advice that you've given on
6 managing OPED liabilities for these corporations. Of those
7 corporations there you are giving this advisor to, how many
8 of them have been in bankruptcy?

9 A. None.

10 Q. Have you provided any advice to any company
11 in bankruptcy?

12 A. No.

13 Q. And you have provided advice in connection
14 with the Delfi bankruptcy?

15 A. Yes.

16 Q. But you refuse to tell us what that advice
17 was at your deposition because of confidentiality concerns?

18 A. Yes.

19 Q. So we can't ask you today to advise the
20 court what your experience has been in dealing with the
21 Delfi bankruptcy and how they were managing their OPED
22 liabilities, right?

23 A. Yes.

24 Q. Now the Academy of Actuaries, American
25 Academy of Actuaries, you are certified as a member of

1 that, correct?

2 A. Yes.

3 Q. There's also something called the society
4 of actuaries; is that correct?

5 A. Yes.

6 Q. And have you to pass a series of tests and
7 exams in order to become a fellow of the Society of
8 Actuaries; is that correct?

9 A. Yes.

10 Q. And while the number has varied over the
11 years, it was somewhere around ten tests; is that right?

12 A. Yes.

13 Q. You took one of them and passed it, right?

14 A. Yes.

15 Q. And you didn't take the other nine?

16 MS. CECCOTTI: Objection, your Honor. I
17 don't understand what the purpose of this is.

18 MR. HAMILTON: I'm going into her
19 qualifications, your Honor.

20 THE COURT: Sure.

21 MS. CECCOTTI: She's already been qualified
22 as an expert.

23 THE COURT: Well, I have to weight her
24 testimony. Overruled.

25 BY MR. HAMILTON:

1 Q. You didn't take the other nine?

2 A. That's correct.

3 Q. What was the subject matter of the one test
4 you did take?

5 A. The test among the society still business
6 was a calculus festa.

7 Q. Now did you have to take any type of test
8 or exams to get what qualified for the American Academy of
9 Actuaries?

10 A. Yes, I did.

11 Q. And in that context did you have to take
12 any courses or take any type of training courses in order
13 to take the test?

14 A. Yes.

15 Q. Have you received training in how you or
16 what the effect of Chapter 11 is in the calculation of APBO
17 liabilities?

18 A. No.

19 Q. Your engagement started in January of '07;
20 is that right?

21 A. Yes.

22 Q. And your the very first thing you did when
23 you started your engagement was to define the scope of the
24 engagement; is that correct?

25 A. Correct.

1 Q. And the information you asked for you asked
2 from both the debtors and other people in your research
3 department at Milliman; correct?

4 A. Yes.

5 Q. Now in addition to the analysis and data
6 you provided in your declarations you row provided here
7 today for the court you also provided other data and
8 declarations with respect to the unions in this case with
9 respect to their negotiations; is that correct?

10 A. Yes.

11 Q. And you haven't told us what that advice
12 and information because was because you were instructed by
13 your counsel, correct?

14 MS. CECCOTTI: Objection I don't understand
15 the scope of witness's testimony here. She is here as an
16 expert to discuss her expert testimony.

17 THE COURT: Overruled.

18 Q. You haven't told us what that additional
19 data analysis, advise, and recommendations that you've
20 given to unions in this case was because you were
21 instructed to buy your counsel, right?

22 A. Correct. I was told to focus on matters
23 record regarding the declaration and not to discuss party.

24 Q. Let's go to your declaration, if I could
25 ask you to take the cross examination binder and go to Tab

1 3, which is just another copy of the declaration that you
2 were already discussing on your direct?

3 A. Yes.

4 Q. And I want to refer your attention, Ms.
5 Taranto, to paragraph 3 to page 2?

6 A. Yes.

7 Q. And after you indicate the documents that
8 you were initially provided by Dana, there's a sentence
9 that starts with "we were not provided."

10 Do you see that sentence?

11 A. Yes.

12 Q. That sentence says, "We were not provided
13 with sufficient information to replicate the actuarial
14 valuation work performed by Towers Perrin."

15 Do you see that?

16 A. Yes.

17 Q. Since the time you prepared that this
18 declaration you have provided that information, correct?

19 A. Yes.

20 Q. Now your next sentence right after that
21 says, "Since we were not provided with adequate participant
22 data or detailed actuarial assumptions, we have been
23 required to rely, without audit, on the work completed by
24 Towers and presented by Dana in our analysis."

25 That is correct, right?

1 A. Yes.

2 Q. Now that's not an entirely true statement,
3 is it?

4 A. It was true at the time.

5 Q. Well, at the time it was outside of the
6 scope of your engagement by the unions to perform an audit
7 on the work completed by Towers, correct?

8 A. No.

9 Q. When you were provided the information that
10 you needed to do such an audit, you didn't do that audit,
11 correct?

12 A. An audit? Yes.

13 Q. I'm sorry, I need to --

14 THE COURT: I don't understand the answer.

15 MR. HAMILTON: There was a double negative
16 in that question?

17 Q. Since you prepared this declaration you
18 have been provided with sufficient information to replicate
19 the actuarial valuation performed by Towers Perrin,
20 correct?

21 A. Yes.

22 Q. Even though you have the information, you
23 haven't done it, you haven't replicated the actuarial
24 valuation performed by Towers Perrin; correct?

25 A. Yes, that is correct.

1 Q. And the reason you haven't done it is
2 because it was outside of the scope that you were engaged
3 to do by the unions, correct?

4 A. What I was asked to do was to audit the
5 work, not replicate the valuation, auditing the work gave
6 me sufficient comfort with of what Towers did, that in
7 conjunction with the fact that they were a large actuarial
8 firm gave us comfort that we could rely on their analysis.

9 Q. All right. So in any event, the bottom
10 line is that you've now audited the work and you believe
11 the work they did was based on reasonable assumption and
12 you have no reason to doubt any of their numbers, correct?

13 A. Correct.

14 Q. Let's go to paragraph 7 of your
15 declaration.

16 A. Yes.

17 Q. And you will a pretty fairly lengthy
18 discussion of this concept of caps in connection with this
19 paragraph, the caps that have been imposed. An as I
20 understand it there have been caps applied not only to the
21 union employees of Dana but also the nonunion employees and
22 the salaried workers as well; is that right?

23 A. I did not focus on them, but yes I believe
24 there were limit.

25 Q. So it's not like the union employees were

1 singled out to have their retiree benefits capped?

2 A. No.

3 Q. And as a matter of fact the non union
4 hourly employees and salaried employees, their benefits
5 have been capped at a higher level and for a much longer
6 time than its union employees, correct?

7 A. I don't know that for a fact.

8 Q. Do you have any reason to doubt it?

9 A. My understanding of the these retiree
10 health plan for salaried employees is in its a different
11 type of cap I don't know when what under the circumstances.

12 Q. Now these caps, I think that you were kind
13 of hinting in your direct they are not air tight, Dana
14 still has some exposure to increased cost as a result of
15 the inflation of medical costs, correct?

16 A. On a very limited basis there is one
17 location with 365 prescription drugs that are subject to a
18 cap. But for medical costs, the caps preclude Dana from
19 being exposed to future inflation.

20 Q. But what about the lock back that you were
21 describing. Let's talk about that, all right?

22 A. Sure.

23 Q. Used for an example, I tried to follow it
24 but you used a hundred dollars figure and the Dana's cap,
25 you called it Dana's cap is 50?

1 A. Um hum.

2 Q. But of the actual cost incurred are only 90
3 the employees has to pay 40, right?

4 A. Yes.

5 Q. And so Dana actually instead of having to
6 pay 50, pays 60, right?

7 A. Correct.

8 Q. And that additional 10 dollars, in your
9 example is the result of medical inflation that occurred
10 during the two year look back period, correct?

11 A. Correct.

12 Q. So there is some exposure to Dana of they
13 have to pay the increased medical inflation cost during
14 that two year look back?

15 A. That's not quite correct. The exposure to
16 inflation with respect to whatever the redefined cap is,
17 the 50 dollars stated plus the 10 dollar two year
18 deferential is not subject to additional future inflation.
19 So the question is the point of the line 59 which you
20 define the cap relative to inflation over a one or two year
21 period which you would expect to be fairly consistent.

22 Q. When you are doing your APBO calculations,
23 if you are an actuary, you take into account the fact that
24 there are caps, right?

25 A. Correct.

1 Q. So the economic impact of the caps is
2 already included in Dana's APBO figures, correct?

3 A. Correct.

4 Q. Now, at the end of your paragraph in
5 talking about the caps, this is paragraph 7 you say, "The
6 decrease over time in the FAS 106 expense and liability is
7 consistent with the information reported in Jeffrey
8 Hoffman's declaration which indicates a 23 percent decrease
9 in annual expense from 2006 to 2012 and a 17 percent
10 decrease in liabilities."

11 I read that correctly, right?

12 A. Yes.

13 Q. So I'm trying to understand what your
14 argument is here, but let me see if I can get it correctly.
15 Is it fair to say that what you are saying is that in the
16 future over time as current retirees who don't have a cap
17 die, and therefore drop out of the APBO and new retirees
18 who did do have a cap replace them, Dana's APBO and FAS 106
19 expense numbers are going to decline, is that right?

20 A. That's correct.

21 Q. So you cite this figure of 23 percent over
22 the next five or six years as somehow supporting that
23 argument, correct?

24 A. Yes.

25 Q. So to give the judge an idea of how

1 significant this argument is you are making?

2 A. Yes. I'm reporting the numbers that Towers
3 is reporting.

4 Q. So you are suggesting that this 23 percent
5 decrease in the FAS 106 number over the next six years is
6 as a result of people who aren't capped dying being
7 replaced by people who are capped; is that right?

8 A. Generally yes.

9 Q. Are you familiar with something called
10 fresh start accounting?

11 A. Yes.

12 Q. This wasn't part of any of the training you
13 received in becoming the American Academy of Actuaries, you
14 don't have any bankruptcy expertise, right?

15 A. Fresh start accounting is a concept that is
16 broader than just bankruptcy.

17 Q. Do you understand that whether a company
18 come out of Chapter 11 it has an impact on how the APBO
19 number is calculated, correct?

20 A. The APBO number?

21 Q. Yes?

22 A. That's not my understanding liabilities.

23 Q. Does it have an impact on the FAS 106
24 number?

25 A. It has an impact on the expense and it has

1 an impact on the balance sheet, but the liability
2 calculation is unimpacted by the emergency bankruptcy -- by
3 a fresh start.

4 Q. Let's turn to Tab 5 of your binder, please?

5 A. Yes.

6 Q. This is Debtor's Exhibit 62.

7 Now does this documentary reflect the
8 original base line numbers that you use to make your
9 assertion of the end of behalf 7, the declaration of the 23
10 decline?

11 A. No. This is dated 3/21/07, so --

12 Q. I know it's not the same document, this has
13 updated numbers, but it includes the numbers that you used
14 to calculate your 23 percent, right?

15 A. Yes. It includes the cash, the periodic
16 cost and the liability.

17 Q. Right. And if we go to the middle row
18 there are periodic costs, that is what you are referring to
19 when you're talking about in the FAS 106 expense liability,
20 correct?

21 A. Yes.

22 Q. And your testimony is from 2006 to 2012
23 there is a 23 percent decline?

24 A. Based on Towers numbers, yes.

25 Q. And the Towers number you make that

1 argument is the line that says original base line, right?

2 A. I believe so.

3 Q. It starts out at 106 and then decline?

4 A. Yes, I believe so.

5 Q. And in that decline, by the time you get to
6 2012, is approximately 23 percent, correct?

7 A. Correct.

8 Q. And then Mr. Hoffmann updated those numbers
9 for purposes that of of this trial and you have an updated
10 base line do you see that?

11 A. Yes.

12 Q. And as part of that update if you look at
13 footnote one it indicates that it was updated to reflect a
14 number of factors, one of which was to reflect the fact,
15 item number E, that it was expected that Dana would emerge
16 from bankruptcy at the end of December 31, 2007, correct?

17 A. Um hum.

18 Q. You have to say yes or no for the record.

19 A. Yes, I'm sorry.

20 Q. So what we notice is that there is a huge
21 drop off in the annual expense, the FAS 106 expense from
22 2007, when Dana is still in bankruptcy, and 2008 when it's
23 not, right?

24 A. Correct.

25 Q. Now that huge drop has nothing to do with

1 employees who are not capped dying and being replaced by
2 capped employees, that is entirely a result of fresh start
3 accounting, is it not?

4 A. No.

5 Q. Isn't that what Mr. Hoffman testified to on
6 direct?

7 A. I did not read that part of it. I would
8 observe that the APBO.

9 Q. I'm not talking about the APBO, ma'am, I'm
10 talking about --

11 MS. CECCOTTI: Can the witness please
12 finish her answer.

13 MR. HAMILTON: She is not answering the
14 question I asked.

15 THE COURT: I'll allow her to explain it,
16 and you can cross examine it.

17 A. Fresh start accounting is one component,
18 however, the fact that the liability which drives other
19 components of the expense which is decreasing because of
20 this replacement of uncapped liability and capped
21 liability, is another contributing factor, and a large
22 factor, that would lead to the decrease and expense over
23 time.

24 One of the components of expense is the
25 interest on the liability; a large components of expense.

1 So where fresh start may impact other amortization elements
2 that may drive the expense, the liability itself and the
3 decrease in that liability over time drives a good measure
4 of expense and the decrease over time.

5 Q. Okay. If you look at the numbers, ma'am,
6 from 2008 to 2009, the FAS 106 expense number decline by
7 less than a million bucks, right?

8 A. Yes.

9 Q. And from 2009 to 2010 it decline by less
10 than a million bucks, right?

11 A. I think that's a little more, but yeah.

12 Q. Well 92 --

13 A. Of which one?

14 Q. The revised one.

15 A. Updated base line 1?

16 Q. Yes.

17 A. Yes.

18 Q. And then from 2010 to 2011 it declines by a
19 million bucks, right?

20 A. Yes.

21 Q. And between 2011 and 2012 it decline by a
22 million bucks, right?

23 A. Yes.

24 Q. But from 2007 to 2008 it declines by almost
25 22 million dollars, right?

1 A. Right.

2 Q. So it's a million dollars in every other
3 year except the year that Dana comes out of bankruptcy,
4 right?

5 A. Correct.

6 Q. Okay. So isn't it fair to say that of the
7 that 22 million dollar decrease from the year they came out
8 of bankruptcy a million dollars or less might be due to
9 something other than the result of fresh start accounting?

10 A. That's fair.

11 Q. All right. So this citing 23 percent
12 figure in your paragraph 7 is somewhat deceptive, right,
13 it's really about a million bucks a year?

14 A. Give or take.

15 Q. So if Dana does anything your testimony is
16 that this hundred million dollar a year expense they have
17 will decline about a million dollars a year?

18 A. Over this particular period of time under
19 these assumptions.

20 Q. Okay. That's about one percent a year, not
21 23 percent over five years, right?

22 A. Yes.

23 Q. Do you provide any actuarial advice or
24 benefit plan advice at Milliman to companies that have
25 global operations?

1 A. Yes.

2 Q. And, in fact, if we take a look at tab one
3 of the cross examination binder, this is a brochure
4 prepared by Milliman, correct?

5 A. Yes.

6 Q. And if we open up to the first page which
7 actually, if we look behind the cover page where it says
8 Milliman employee benefits, do you see that?

9 A. Yes.

10 Q. If you look at the second column, the first
11 full sentence starts with offices do you see that?

12 A. Yes.

13 Q. "With offices and principal cities
14 worldwide, Milliman combines global experience with local
15 knowledge. We can help you be prepared to operate in new
16 markets, expanded beyond your boundaries, and understand
17 how your industry is affected by the developments around
18 the world." Is that right?

19 A. Yes.

20 Q. Have you had occasion to advise your
21 clients regarding the impacts on their benefit programs
22 that they face when they have to compete with employers in
23 other countries like China and India and Mexico that have
24 different healthcare costs experience?

25 A. Can you elaborate?

1 Q. Well, isn't it fair to say that some of
2 your clients come to you, your clients with global
3 operations, and say one of the reasons that we believe we
4 have to reduce our retiree benefit obligations is because
5 we are competing with overseas operations that don't have
6 the same comparable level of retiree benefit obligations
7 that they have to account for when they produce their
8 competing products, right?

9 A. Not necessarily.

10 Q. You haven't had that experience?

11 A. Not in those specific words.

12 Q. Do you have any understanding of are what
13 the relative retiree healthcare burdens are on automotive
14 parts suppliers in China or India or Mexico?

15 A. Yes.

16 Q. Is it less than the burdens that auto parts
17 suppliers in its United States have?

18 A. Yes.

19 Q. And you would agree that one of the reasons
20 an employer would want to reduce the retiree health
21 benefits here in the United States is because of
22 competitive pressures because from get competitors that
23 have lower retiree health costs, right?

24 A. That could be.

25 Q. Well, based on your experience of 20 years

1 or eighteen years, is it?

2 A. Yes.

3 Q. Would you say that therefore with respect
4 to companies in the United States, companies in the United
5 States that are competing globally with competitors in
6 lower cost countries are more likely to want to reduce or
7 eliminate their retiree benefits than companies in the
8 United States that are not completing on a global market?

9 A. No.

10 Q. Not likely?

11 A. No, I have no basis to say that.

12 Q. And conversely then you have no basis to
13 agree with me that employers that don't compete on a global
14 level on are less interested or less likely to want to on
15 reduce or eliminate their retiree benefits?

16 A. Employees depends on their financial
17 circumstances whether it's competing or not.

18 Q. Would you agree with me that for instance
19 transportation companies here in the United States are
20 generally trucking companies, they are not competing with
21 competitors in Asia, right?

22 A. I don't know.

23 Q. But communications companies here, the
24 utilities here in the United States they weren't competing
25 with competitors and India?

1 A. Communication, yes.

2 Q. Some communication maybe.

3 A. (No response)

4 Q. Is it possible, based on your experience
5 and qualifications as an expert, that one of the reasons
6 that there is a much higher prevalence among large
7 employers in the transportation, communications and
8 utilities industry, there is a much higher percentage of
9 retiree benefits than those employers in the manufacturing
10 segments, and that one of the reasons the employers in the
11 transportation and utilities do not compete with lower cost
12 countries in United States and Mexico. Is that possible?

13 A. I have no basis to confirm or deny.

14 Q. Isn't it true that you and others at
15 Milliman have been assisting at least some clients to
16 terminate and eliminate their retiree benefits for
17 retirees?

18 A. Yes.

19 Q. And in fact if you look at tab 12, of your
20 binder, this is Debtor's Exhibit 246, this is a power point
21 presentation presented by one of your colleagues at
22 Milliman; is that correct?

23 A. Yes.

24 Q. Do you know do you have any idea where that
25 presentation was made?

1 A. No.

2 Q. If you flip to page 24?

3 A. Yes.

4 Q. Is this a picture of what some of your
5 clients like look like whether they come to you?

6 MS. CECCOTTI: Your Honor, objection.

7 MR. HAMILTON: Is this supposed to --

8 MS. CECCOTTI: Objection.

9 MR. HAMILTON: This is their penalty. This
10 is supposed to represent why your clients come to you.

11 A. This specific exhibit is about Gasby 45
12 accounting rules. I think I would be holding my head going
13 through some of these accounting rules for the first time.

14 THE COURT: I can also replicate that
15 picture when listening to some of the testimony.

16 MR. HAMILTON: She is obviously geared to
17 go to battle or win the war, war, your Honor.

18 THE COURT: Those are attached to the
19 exhibit.

20 Q. Summing up the exhibit, let's go to page
21 35. 35 has four bullet points, right?

22 A. Yes.

23 Q. And these are actions that Milliman advises
24 their clients they should consider whether they are trying
25 to figure out you how they are going to reduce or eliminate

1 their retirees burdens, right?

2 A. Yes.

3 Q. And you've advised your clients to consider
4 all four of these, correct?

5 A. Yes.

6 Q. Do you have any experience in conducting
7 large surveys of employers in the United States regarding
8 the healthcare benefits they provide to retirees?

9 A. No.

10 Q. Have you published any research on how such
11 surveys are conducted?

12 A. No.

13 Q. Have you published any research on how and
14 to what extent you can extrapolate such surveys across the
15 entire United States population?

16 A. No.

17 Q. Do you have any personal experience as to
18 what type of companies are likely to respond to such
19 surveys?

20 A. No.

21 Q. Do you have any personal experience that
22 tells you what considerations cause some companies to
23 respond to the surveys and cause other companies not to
24 respond to the surveys?

25 A. Can you ask that question again?

1 Q. Sure do you have any experience that gives
2 you some understanding as to why some companies decide to
3 respond to the surveys and other companies don't?

4 A. Yes.

5 Q. Based on whatever that information and
6 experience is, would you say its fair that companies that
7 are in financial distress are less likely to respond to
8 such surveys than companies that are not?

9 A. No.

10 Q. You don't think that's a fair
11 characterization?

12 A. Have I no reason to say that that's a
13 differentiator.

14 Q. But you've never conducted such surveys?

15 A. I have.

16 Q. But and you your counsel said you reviewed
17 Ms. Mull vase testimony?

18 A. Yes.

19 Q. And she told you the court based on her
20 five years at Watson Wyatt conducting such surveys, it was
21 her experience that companies in financial distress were
22 less likely to respond to the surveys because they didn't
23 need to benchmark their programs against financially
24 healthy companies, right? That's what she said?

25 A. I read that testimony, yes.

1 Q. You disagree with that?

2 A. I have no basis to basis to agree or
3 disagree.

4 Q. So you don't agree?

5 MS. CECCOTTI: Your Honor, I think the
6 witness has answered the question clearly.

7 MR. HAMILTON: I'll move on. I guess
8 disagree that she answered it clearly, but I'll move on.
9 BY MR. HAMILTON:

10 Q. Let's go to your declaration again in
11 paragraph 9?

12 A. Yes.

13 Q. All right. The second sentence says "A
14 Kaiser family foundation 2005 survey indicated that 60
15 percent of employers with more than 5 thousand employees
16 offered post retirement medical coverage." Did I read that
17 correctly?

18 A. Yes.

19 Q. Did I read that correctly?

20 A. Yes.

21 Q. How did that sentence get in your report?

22 A. I read the Kaiser survey and put it in.

23 Q. You've read the Kaiser 2005 survey?

24 A. Yes.

25 Q. Why wasn't it included in your relies

1 materials that you produced to Dana in this case?

2 A. I didn't realize it wasn't, sorry.

3 Q. Okay. Well on direct -- let's go to Tab 8,
4 Debtor's Exhibit 73?

5 A. Yes.

6 Q. Right?

7 A. Yes.

8 Q. This is the survey that you say you read,
9 correct?

10 A. This is the summary of the findings.

11 Q. And if you look at page 8 you have section
12 11 on retiree health benefits, right?

13 A. Yes.

14 Q. This is what you are saying you read,
15 correct?

16 A. Yes.

17 Q. Now if we look back at your declaration,
18 the very last page, you have sources?

19 A. Yes.

20 Q. This is Tab 3 very last page you put
21 sources?

22 A. Yes.

23 Q. That 2005 survey isn't listed as one of
24 your sources, correct?

25 A. No, it's not.

1 Q. And if we look at tab 7, of your cross
2 examination binder?

3 A. Yup.

4 Q. You have an e-mail in clear tuck one of the
5 union lawyers to you indicating that she wanted to ask you
6 to if you wanted us to submit the following reports as
7 exhibits which you lift as sources in your report it lists
8 those two sources?

9 A. Yes.

10 Q. There's no reference to the Kaiser 2005
11 exhibits, correct?

12 A. Yes.

13 Q. There's not a reference?

14 A. Correct.

15 Q. Well, if we go to Tab 8, which is the 2005
16 survey, which you said you read and then put in the report,
17 the figure on page 116 for jumbo employers with 5 thousand
18 or more workers is 55 percent, right?

19 A. Correct.

20 Q. Not 60, correct?

21 A. Yup.

22 Q. How did you turn 55 into 60?

23 A. I screwed up. I made a mistake.

24 Q. How did a mistake occur? How does 55
25 become 60?

1 MS. CECCOTTI: Your Honor, again, I think
2 she is answered the question.

3 THE COURT: Sustained.

4 Q. Going back to your declaration paragraph 9,
5 the third sentence talks about a review of financial
6 statement who did that review of the S&P companies?

7 A. Milliman's research department.

8 Q. At your direction?

9 A. They do it at as part of the service they
10 provide to consultants.

11 Q. Did they -- thousand do you find out about
12 the research?

13 A. The research an available to Milliman
14 consultants. I asked for a specific extract and to whole
15 specific figures among a large data base there Milliman
16 maintains for various purposes.

17 Q. Okay. And of the 64 percent of the 500
18 employers that were reviewed, that still offer retiree
19 healthcare to all or part of their work force, how many of
20 that 64 percent are in financial distress?

21 A. I don't know those numbers off the top of
22 my head.

23 Q. How many of that 64 percent are in the
24 manufacturing industry as opposed to transportation
25 communications or utilities?

1 A. I don't know that number off the top of my
2 head.

3 Q. What does part of the work force mean in
4 that sentence?

5 A. It means that they have an OPED liabilities
6 and we did not determine whether the OPED liability applies
7 to the entire work force or part of the work force.

8 Q. All right. Let's go to paragraph 11 of
9 your declaration where you cite the 2005 Watson Wyatt study
10 of 164 companies.

11 Now, if I could ask you to turn very
12 quickly to Tab 11?

13 A. Yes.

14 Q. This is the executive summary of that
15 survey correct?

16 A. Yes.

17 Q. It's not the full survey?

18 A. Correct.

19 Q. Did you produce the full survey in the
20 reliance materials?

21 A. No the executive summary.

22 Q. Did you review the full survey?

23 A. No, the executive summary.

24 Q. So all you looked at was the executive
25 summary?

1 A. Yes.

2 Q. Do you know what the response because how
3 they got the 164 companies?

4 A. I don't know the response rate.

5 Q. Do you know whether or not what percentage
6 of the 164 companies that responded to the survey are in
7 financial distress?

8 A. No, I do not.

9 Q. Do you have any idea of what percentage of
10 the company's that did not responds to the survey are in
11 financial distress?

12 A. I don't know the left of the survey initial
13 send.

14 Q. Would you agree that a company is in severe
15 financial distress would be March likely to eliminate
16 benefits for rear rise than a company that's not in
17 financial distress?

18 A. It's possible.

19 Q. I know it's possible. Why my question is
20 would you agree with it?

21 A. Yes.

22 Q. If I could ask you to turn again to Tab 11
23 which is the executive summary. The second paragraph says
24 "The results of our 2006 survey on retiree medical benefits
25 show that while most employers, most employers are

1 disengaging from or reducing retiree medical benefits they
2 have not yet settled on a strategy for doing so yet."
3 Would you agree with that?

4 A. Not necessarily.

5 Q. So while you want to use the statistics
6 from the survey you don't agree with its conclusions from
7 the people that made the surveys; is that correct?

8 A. It's the employers have certainly provided
9 various strategies, at least in the short term, for
10 changing or what they intend to do with respect to the
11 benefits.

12 Q. If we can go to page 34 of the executive
13 summary under future planning?

14 A. Yes.

15 Q. The second paragraph says "Strategies
16 differ for current and future retirees, although an
17 increased level of employee responsibility and cost cutting
18 is apparent throughout. In fact very few employers
19 anticipate placing no further restrictions on benefit
20 offerings to both their future and current retirees (5 and
21 7 percent respectively) and changing in the employees
22 contributions and overall plan design are planned for many
23 pre- and post 65 retirees." Did I read that correctly?

24 A. Yes.

25 Q. Do you agree with those findings?

1 A. Based on the statistics shown in this
2 exhibit, yes.

3 Q. And if we look at the last page, page 4 the
4 executive summary under conclusion, the very last paragraph
5 says, "In sum, employers will continue to shift more plan
6 responsibility to their current and future retirees." Do
7 you agree with that sentence I just read?

8 A. Yes.

9 Q. All right. Let's go to paragraph 12 of
10 your declaration again Tab 3 of the binder?

11 A. Yes.

12 Q. Very last sentence says, "Based on various
13 reports including a 2005 Kaiser study, almost 80 percent of
14 large employers kept their retiree prescription drug
15 programs and took the subsidy in 2006, 2007." Did I read
16 that correctly?

17 A. Yes.

18 Q. This particular Kaiser, study this wasn't a
19 normal annual study, this was an on line study conducted
20 during a six month period in 2005, correct?

21 A. I believe so.

22 Q. This study expressly excluded from its
23 survey employers that had already eliminated retiree health
24 benefit coverage, correct?

25 A. Yes.

1 Q. In fact if we turn to Tab 6 in your binder,
2 this is the study that you are referring to there, right?

3 A. Yes.

4 Q. This is the study that you cite as one of
5 your sources?

6 A. Yes.

7 Q. Right.

8 A. Yes.

9 Q. And if you look at the very first page of
10 the executive summary --

11 A. Yes.

12 Q. -- which has a little -- what do you call
13 that? A little Roman 5 there?

14 A. V, yes.

15 Q. The v.

16 A. Yes.

17 Q. Third paragraph there is a reference there
18 to the big study, the last sentence says, "Between 1988 and
19 2005 the share of employers with 200 or more employees
20 offering retiree health benefits declined from 66 percent
21 to 33 percent, which likely to increase such retirees
22 without such benefit. Do you see that?

23 A. Yes.

24 Q. Did I read that correctly?

25 A. Yes.

1 Q. And it's citing the big study, correct?

2 A. Yes.

3 Q. If we go to the very back, page 47 of this
4 survey, this is the appendix that described the method of
5 survey approach, correct?

6 A. Yes.

7 Q. The second paragraph says, "By design, the
8 Kaiser Hewlett survey focused exclusively on large private
9 employers that currently provide retiree health coverage
10 rather than surveying employers who do not offer coverage?
11 Did I read that right correctly?

12 A. Yes.

13 Q. The next sentence says that it's based on a
14 non probability sample because there was no database from
15 which a random sample could be drawn, correct?

16 A. Yes.

17 Q. And if we go to the bottom of page 47,
18 under the heading characteristic of participating
19 employers, it says, "Overall, 335 employers responded to
20 the survey. Employers not providing coverage, those with
21 fewer than 1,000 employees, and government employers were
22 excluded, leaving a total of 300 large and private employers
23 whose responses are included in the survey analysis."
24 Correct?

25 A. Yes.

1 Q. So if we go back to your declaration Tab 3
2 paragraph 12, the last sentence, really to make this
3 sentence the truth, the whole truth, and nothing by but the
4 truth, you have to modify it so that it reads based on
5 various reports, including a 2005 Kaiser study, almost 80
6 percent of large employers who still provided the benefit
7 in 2005, kept their retiree prescription drug programs and
8 took the subsidy in 2006, 2007, correct?

9 A. That's correct. You need to provide a
10 program to be eligible for the subsidy.

11 Q. Right. It's not fair to say that 80
12 percent of large employers took the subsidy because that
13 number excludes all of the large employers who had already
14 eliminated the benefit before 2005, correct?

15 A. Yes.

16 Q. All right, let's go back to that study
17 because there's some other statistics in there that are
18 kind of interesting. This is Tab 6. Again on the
19 executive survey, this time the page that has the little
20 vi, there's a reference to the survey methods. The second
21 paragraph gives you some indication of what the response
22 rate was, right?

23 A. Yes.

24 Q. And it indicates that it's a response rate
25 of between 19 to 36 percent, depending on the size of the

1 employers, correct?

2 A. Yes.

3 Q. Which indicates that most of the company's
4 which were sent the survey chose not to respond, correct?

5 A. Yes.

6 Q. If we flip then to two pages to the viii.
7 The second bullet under premiums starts with 19 percent.
8 Do you see that?

9 A. Yes.

10 Q. It says "19 percent of surveyed firms
11 require newly retiree age 65 plus retirees in the largest
12 plan to pay one hundred percent of the total premium for
13 their health insurance coverage, correct?

14 A. Yes.

15 Q. Now, the next sentence -- I mean the next
16 paragraph starts with changes between 2004 and 2005. And
17 the first bullet says, "Nearly 3 and 4 employers, 75
18 percent in parenthesis increased retiree contributions in
19 premiums between 2004 and 2005." Is that correct?

20 A. (No response).

21 Q. Did I read that correctly?

22 A. You read it correctly.

23 Q. Do you agree with their figure?

24 A. I have no reason to believe it's incorrect
25 for the surveyed group.

1 Q. And that's referring to increasing
2 contributions for current retirees, correct?

3 A. Yes.

4 Q. From the perspective of a current retiree
5 of Dana, if, as a result of this proceeding and
6 negotiations that may occur that may obviate the need for
7 the judge to have to make a ruling or whatever the judge
8 rules, a VEBA is created a money is put into the VEBA, from
9 the perspective of the Dana retiree, the result is that
10 retiree is going to have to pay a higher percentage of the
11 premium for his healthcare coverage, right, whatever the
12 VEBA didn't doesn't cover, right?

13 A. Yes.

14 Q. So from the perspective of a Dana retiree,
15 what we are proposing is the same as what nearly 3 and 4
16 employers are doing according to this survey, right? We
17 are increasing their current retiree contribution to their
18 premiums.

19 MS. CECCOTTI: I'm going to object to
20 counsel's characterization of the proposals. I don't know
21 that he has described the proposal for the unions.

22 MR. HAMILTON: You did it on direct.

23 Q. It's a VEBA with money in it, correct?

24 MS. CECCOTTI: That's not the company's
25 proposal.

1 MR. HAMILTON: Let me start over, Judge, I
2 would rather not argue with her, I would rather ask the
3 witness a question.

4 THE COURT: So her objections as to form is
5 sustained.

6 MR. HAMILTON: Okay.

7 BY MR. HAMILTON:

8 Q. You understand the that the proposal by the
9 debtors to create a VEBA for Dana's current retirees, and
10 there's a proposal to put money in the VEBA, right?

11 A. Yes, to eliminate benefits, put money in
12 the VEBA.

13 Q. And the money in the VEBA will be used to
14 subsidize whatever health insurance coverage the current
15 retirees get, right?

16 MS. CECCOTTI: Your Honor, once again I'm
17 going to object because I think the witnesses testimony
18 is --

19 MR. HAMILTON: I don't want her to testify.

20 THE COURT: The witness is now asked a
21 specific question. She can either answer it or not.

22 MS. CECCOTTI: Based on an incorrect
23 description of a proposal, or an incomplete description of
24 a proposal.

25 THE COURT: You'll have an opportunity to

1 redirect.

2 MR. HAMILTON: Thank you, your Honor.

3 Q. The money in the VEBA will be used -- your
4 understanding is that the money in the VEBA will be used to
5 subsidize the retiree health insurance that the current
6 retirees get, right?

7 A. I'm not clear on the details, but I do
8 understand that there was a proposal of some funding. It's
9 unclear as to whether that will be used or already spent
10 with respect to previous claims.

11 Q. Obviously it depends on how much money is
12 put in the VEBA, right?

13 A. Yes.

14 Q. And we know that with respect to the
15 nonunion retirees, there's going to be 78 million dollars
16 put in the VEBA, right?

17 A. I don't know the details of that so I don't
18 know.

19 Q. If a significant amount of money is put
20 into the VEBA as a result of negotiation as a result of a
21 recovery on a claim or however it happens, the result from
22 a the perspective of the Dana retiree is they are going to
23 have to pay a require percentage of their premiums than
24 they did before the 1113, 1114 proposal, right?

25 MR. LEVINE: I'm going to object to form

1 again.

2 THE COURT: Overruled.

3 Do you understand the question?

4 THE WITNESS: Yes.

5 A. To the extent that coverage is continued to
6 be offered, yes, they would have to pay much more for it.

7 Q. And that's consistent with what 3 out of 4
8 large employees are doing for current retirees are doing
9 according to the 2005 Kaiser survey that you cited in your
10 report, right?

11 A. Yes.

12 Q. If we flip to the executive summary with
13 the x, page 10 of the executive summary, that says, "9
14 percent of surveyed employers, leaving out the hyphenated
15 phrase, 9 percent of the surveyed employers report that
16 they are likely to discontinue drug and/or medical coverage
17 for the plan with the largest group of age 65 plus
18 retirees." Correct? Did I read that right?

19 A. You read it right.

20 Q. And that's referring to current retirees,
21 correct?

22 A. I believe so.

23 Q. Okay. Now just to keep in mind let's go
24 back to how we got on this let's go back to your
25 declaration Tab 3, paragraph 12 last sentence based on this

1 study that we've been looking at you conclude there 80
2 percent of large employers, who are still provided the
3 benefits in 2005, kept their retiree prescription drug
4 programs and took the subsidy in 2006, 2007, correct?

5 A. Yes.

6 Q. Now, there was a larger percentage than
7 what's indicated here that indicate they weren't sure what
8 they were going to do in years after 2007, right?

9 A. This question is specific to 2006.

10 Q. Yes, 2006, 2007. Let's go back to the
11 survey again Tab 6, xi page 11 of the executive summary.

12 In the middle of the page there's a heading
13 that says Medicare strategies beyond 2006. Do you see
14 that?

15 A. Yes.

16 Q. The first bullet has your eight out of ten,
17 your 80 percent figure, right?

18 A. Right.

19 Q. The second bullet says, "The share of
20 employers reporting they 'don't know' what their firm will
21 do increases from 11 percent for 2007 to 28 percent for
22 2010."

23 A. Yes.

24 Q. Did I read with that correctly?

25 A. Yes.

1 Q. Do you agree with that?

2 A. Yes. I think it's hard to have employers
3 predict the future.

4 Q. Let's go to Tab 10 of your cross
5 examination binder. These are materials that you relied on
6 in your preparing your report?

7 A. Yes.

8 Q. That's what the ST is at the bottom?

9 A. Yes.

10 Q. Ms. Taranto, I'm going to skip the
11 interesting quotes on the first page because you've already
12 covered that. Let's go to the third page.

13 A. 132?

14 Q. Yes.

15 A. Okay.

16 Q. These are quotes from an article by Jerry
17 Geisel in some publication called Business Insurance at the
18 end of 2005, correct?

19 A. Yes.

20 Q. And on the third page there about halfway
21 down there's a paragraph that starts with the word but, but
22 Kaiser. Do you see that?

23 A. Yes.

24 Q. It says, "But Kaiser and Hewlett experts
25 say that for many employers the decision to take the

1 subsidy is a short term strategy and one made to give
2 employers more time to analyze and decide on a longer term
3 approach. 'Employers no doubt will revisit those
4 decisions' said Trishia Newman, a Kaiser VP in Washington."
5 Did I read that correctly?

6 A. Yes.

7 Q. Did you do agree with that?

8 A. Yes.

9 Q. Let's go down to the next paragraph, and
10 the next paragraph starts with the word indeed. Do you see
11 that?

12 A. Yes.

13 Q. It says, "Indeed, when employers were
14 making their retiree health care plan decisions in 2006, it
15 wasn't known, for example, how many health insurers
16 prescription benefit managers and others would enter the
17 Medicare prescription drug market. That no longer is a
18 concern with retirees in many parts of the country able to
19 choose from a plethora of Medicare prescription drug plans
20 or PDPs from insurers and others." Did I read that
21 correctly?

22 A. Yes.

23 Q. Do you agree with it?

24 A. Yes.

25 Q. Let's go on. "With more certainty in the

1 prescription drug market, the percentage of employers
2 retaining plans that qualify for the 28 percent subsidy is
3 likely to drop according to the survey. For example, while
4 about eight and ten surveyed employers said they are taking
5 the subsidy next year and expect to do the same in 2007,
6 only about 50 percent of employers say they expect to do so
7 in 2010." Do I read that correctly?

8 A. Yes.

9 Q. Is there a reason why you didn't include
10 that 50 percent figure in your report?

11 A. Because the survey itself suggested that
12 employers didn't know what they were going to do.

13 Q. But there was an indication that 50 percent
14 say they expect to not take the subsidy in 2010?

15 A. 50 percent said they expect to take the
16 subsidy, 50 percent said they did not know what they are
17 going to do.

18 Q. Fair enough. Last paragraph, on the bottom
19 of the page, it carries over. It starts with word
20 ultimately. Do you see that?

21 A. Yes.

22 Q. It says, "Ultimately, whether employers
23 will maintain drug coverage for Medicare retirees, or for
24 that matter any retiree healthcare coverage over the long
25 term, will depend on several factors. One key factor is

1 how great the financial burden to provide coverage will
2 prove to be over time the survey notes." Do you agree with
3 that?

4 A. Yes.

5 Q. Back to your declaration, Tab 3?

6 A. Yes.

7 Q. Paragraph 14, page 6. The second sentence
8 starts with the phrase in our experience. Do you see that?

9 A. Yes.

10 Q. Now the experience that you are referring
11 to there is your experience in two years at Milliman and a
12 couple companies before and that, and then I guess at
13 Watson Wyatt, and the experience of two other gentleman at
14 Milliman that you've talked to about this case; is that
15 correct?

16 A. Yes. And the experience of the employers
17 that I have not only worked on personally but have peer
18 reviewed for other consultants at Milliman.

19 Q. Okay, but it's the experience that you
20 collected --

21 A. That's right. As well as the experience
22 that I collected from participating in various seminars and
23 other educational and information sharing as part of being
24 a consulting actuary in a large firm.

25 Q. And how much of that experience have you

1 collected in all those different capacity related to
2 companies in severe financial distress or bankruptcy?

3 A. Certainly there are companies in severe
4 financial distress that I had personally worked on. The
5 work related to General Motors and Ford relates to
6 companies in financial distress.

7 Q. Right and GM created a VEBA, right?

8 A. Yes.

9 Q. And GM isn't in bankruptcy, their creditors
10 are getting paid one hundred cents on the dollar, correct?

11 A. Yes.

12 Q. Unlike Dana's creditors?

13 A. Yes.

14 Q. Do you think that should have any effect of
15 how much goes in the VEBA?

16 A. (No response).

17 Q. You don't know?

18 A. That's a subject of negotiation.

19 Q. Good, I agree. The last sentence of that
20 paragraph, "Because of this leverage and the here leverage
21 you are talking about here is like imposing caps I believe,
22 or -- no; increase in the contributions of the deductibles
23 over time -- I'm sorry.

24 Paragraph 14, the last sentence, what is
25 the leverage you are referring to there?

1 A. The capping.

2 Q. "Because of this leverage limiting the
3 future growth of benefits achieves significant cost savings
4 while more gradually impacting the living standard of the
5 retiree."

6 A. Yes.

7 Q. And the significant cost savings that you
8 are referring to there are the one percent or one million
9 bucks a year for Dana it does nothing, right?

10 A. No. The significant cost savings are the
11 650 million dollar differential in liability that it
12 already has taken into account and the relating impact.
13 The numbers are already there.

14 Q. They have already done that?

15 A. Yes.

16 Q. And after having done that they are losing
17 a couple hundred million dollars a year, right?

18 A. (No response).

19 Q. Dana is in bankruptcy, right?

20 A. Right.

21 Q. Let's talk about the availability of
22 healthcare insurance for current retirees if the Dana
23 program is eliminated. In paragraphs 16 through 17 of your
24 declaration. Paragraph 16 talks about what might be
25 available for pre- 65 current retirees and the problem that

1 Cobra might be expensive, correct?

2 A. Yes.

3 Q. And you have a sentence in there that says,
4 second to last one says, "Some retirees might not be
5 insurable at all outside of the Dana Cobra coverage because
6 of their medical status." Right?

7 A. Right.

8 Q. Just so the court knows, you've provided
9 some data analysis and advise to the union with respect to
10 negotiation and strategy with respect to our proposals that
11 you haven't shared with us, right?

12 A. Yes.

13 Q. And you have looked into issues regarding
14 availability of insurance with respect to their negotiating
15 strategy, but have not allowed us to inquire into that,
16 correct?

17 A. No.

18 Q. You don't recall your counsel instructing
19 you not to answer the question at your deposition regarding
20 insurance to retirees to the effect it might implicate
21 their negotiating strategy; you don't recall that?

22 MR. LEVINE: Your Honor, not to double
23 team, but for the record I was counsel at Ms. Taranto's
24 deposition, and I don't believe that it was appropriate to
25 ask the witness the fact that the expert what counsels

1 objection were. I would be happy to advise the court
2 precisely what the nature of my objections were and I'd be
3 happy to advise the court that what the nature of my
4 agreements were with counsel at the time of the deposition
5 with respect to these kinds of matters.

6 I really think that it's inappropriate and
7 I will represent to this court that we expressed -- I
8 expressed concern about privilege and confidential act with
9 the hope that we would be able to work it without out
10 before your Honor and not in cross examination.

11 And I find for the record your Honor that
12 it's very disappointing that we find now for the first time
13 that there were problems with confidentiality and privilege
14 which were supposed to have been addressed between counsel.
15 Thank you your Honor.

16 THE COURT: Well, I'm listening to the
17 exchange. And I don't think counsel has gone into the
18 depth to raise the concerns that you are now expressed
19 which I think are legitimate. But so far, at this point,
20 he's not achieved that depth, but I will tell him he's just
21 about there.

22 MR. HAMILTON: And I wasn't trying to
23 inquire into the privilege or anything.

24 THE COURT: I would have stopped you.

25 MR. HAMILTON: And I understand that, your

1 Honor. But believe me, having represented the retiree
2 committee in Tower, I'm very much aware of this issue. And
3 I want to ask her about this sentence in her declaration
4 where she is swearing under own oath and giving you advise
5 and telling you to do doing something based on what she
6 says here. And she says...

7 Q. Is it not correct, paragraph 16. "Some
8 retirees may not be insurable at all outside of the Dana
9 Cobra coverage because of their medical status." You do
10 say that, correct?

11 A. Yes.

12 Q. Is it possible that the VEBA could be
13 structured in a way that it could provide subsidy payments
14 to individuals, current retirees, that are unable to get
15 medical insurance outside of Cobra, right? In other words,
16 you could take money from the VEBA and subsidize the Cobra
17 payments for the current retirees that can't get insurance
18 anywhere else. Right?

19 A. Right.

20 Q. That would be up to the trustees of the
21 VEBA of how they wanted to structure it. But if they
22 wanted to, they could take more of the money in the VEBA
23 and give it to the people who can't get insurance elsewhere
24 than to other people who don't need it, right? They could
25 structure it that way?

1 A. Yes.

2 Q. Is isn't it possible that pre- 65 retirees
3 of Dana may have other insurance from other employers?
4 They may have got he been a job somewhere else?

5 A. It is possibility.

6 Q. It's possible that their spouse has
7 insurance from another employer; cetera isn't that right?

8 A. It is possible.

9 Q. And you didn't do any analyses to determine
10 whether or not pre- 65 retirees have insurance from some
11 other employer, correct?

12 A. Correct.

13 Q. Let's look at paragraph 17, the comparison
14 of the Medicare costs for retirees and their pension
15 benefits.

16 Paragraph 17 on your calculation of the
17 average pension benefit, did you include in that
18 calculation individuals who are called terminated vested?
19 They had there rights to pension vested, they left the
20 company but they don't yet have the right to receive
21 payments?

22 A. Yes.

23 Q. You included that in there?

24 A. Yes. Terminated vested participants who
25 have subsequently retired.

1 Q. Yes.

2 A. Not terminated vested participants who have
3 not yet retired.

4 Q. That's right. But they are not yet
5 receiving benefits, right?

6 A. Anybody who is not receiving a benefit is
7 not included in this calculation.

8 Q. Okay. Are surviving spouses included in
9 this calculation?

10 A. Surviving spouses to the extent that they
11 are receiving benefits from the company's pension plan are
12 included in this calculation. Surviving spouses with zero
13 benefits are not included in this average on the pension.

14 Q. When performing this comparison, isn't it
15 true that Dana's current retirees, many of them, are
16 already paying a portion of their Medicare premiums and
17 deductibles right now without being covered by Dana,
18 correct?

19 A. Yes.

20 Q. They have to pay some of it?

21 A. Yes.

22 Q. So they are already having to use, by your
23 comparison in your analysis, they are already is a clunk of
24 that pension that's going to this Medicare cost already,
25 right?

1 A. Yes.

2 Q. And as a result of the VEBA, a bigger chunk
3 of that pension is going to go, right?

4 MS. CECCOTTI: Again, object to the form.

5 THE COURT: Sustained.

6 Q. If the pension, the average pension that
7 you say is in the neighborhood of five thousand or
8 whatever, just as a matter of question, because I don't
9 want to you scare these people or make them thing we are
10 cutting more than we are, in your declaration you say the
11 average monthly pension is 4 thousand bucks, that's a typo,
12 right? It's average annual pension? They are not getting
13 4 thousand dollars a month, are they? Look at your
14 supplemental declaration.

15 A. Oh, yes, I said it per year, you're right.

16 Q. Page 7?

17 A. Yes, you're right.

18 Q. If they were getting 50 thousand dollars a
19 year in pension they really wouldn't have any problems,
20 would they?

21 A. (No response).

22 Q. That's annual, right?

23 A. Yes.

24 Q. If now, if that's their only source of
25 income, if all they are getting is 5 thousand bucks a year

1 or 7 bucks a year, or whatever it is, there are safety
2 nets, right, they would be eligible for Medicaid, correct?

3 A. I'm not sure with that income they would.

4 Q. Isn't it true that if your income is less
5 than 10 thousand as a single person you would be entitled
6 to Medicaid?

7 A. The interplay with Social Security and
8 others I don't profess to know the details of the Medicaid
9 rules.

10 Q. You are not an expert on that?

11 A. Not on Medicaid, no.

12 Q. Well, you are offering expert testimony
13 here on what portion of their pension income is going to
14 have to pay for Medicaid, and you can't tell the court
15 whether or not they are entitled to Medicaid if that's all
16 they've got?

17 A. I'm offering a present value of benefits as
18 a data point in terms of the value of Dana's pension
19 benefit.

20 Q. I understand that. So you don't know that
21 if their income is between 10 and 13 thousand they are
22 eligible for the Medicaid supplementation for their
23 premiums. You don't know that?

24 MS. CECCOTTI: Your Honor, I think the
25 witness has already answered with respect to her knowledge

1 with respect to the intricate Medicaid rules.

2 THE COURT: And I would also sustain an
3 objection as to form, because Medicaid is regulated, to
4 some extent, by individual state law.

5 MS. CECCOTTI: And I would make that
6 objection as well.

7 THE COURT: Pardon?

8 MS. CECCOTTI: I would make that objection
9 as well.

10 BY MR. HAMILTON:

11 Q. Isn't it fair to say that most people in
12 this country that receive Medicare, over 75 percent, do not
13 receive supplementation or premium subsidies from a
14 previous employer?

15 A. I believe that's correct, based on, for
16 example, the Kaiser survey.

17 Q. So somehow most of the people in this
18 country seem to get by in paying their Medicare insurance
19 premiums, right, without any supplementation?

20 A. In terms of employers sponsored health
21 plan, yes.

22 Q. Okay. And with respect to this group, I
23 asked you before about the pre- 65 group...

24 MR. HAMILTON: And I'm getting to the end,
25 Judge ...

1 Q. But with respect to this group, this is the
2 Medicare eligible group, you didn't consider in your
3 analyses whether or not they had any other sources of
4 insurance, correct, from a spouse or other employer?

5 A. No.

6 Q. You didn't consider whether they had any
7 other source of income or savings like a 401K or a new job
8 or business they are running?

9 A. No.

10 Q. I would ask you to turn to Tab 13?

11 A. Yes.

12 Q. This is a Milliman publication from the
13 summer of 2005; is that correct?

14 A. Yes.

15 Q. This is where you are working, right?

16 A. Yes.

17 Q. We turn to page it's titled providing
18 retiree benefits for an active older population. And I
19 know it's judge is going to be interested in this. I want
20 to look on page 7, the first paragraph under the heading a
21 change in work ethic. "Boomers clearly intend to work
22 longer over. The course of their careers, most will work
23 for a far longer total number of employers than any
24 previous generation. Many boomers will wind up their
25 employment days working for themselves. Recent surveys of

1 AARP and others confirms that up to 80 percent of
2 respondents intend to work well into their 70s.

3 Do you see that?

4 A. Yes.

5 Q. Do you agree with that?

6 A. That's news to me.

7 Q. It would be fair to say that at least some
8 portion of Dana's current retirees that are Medicaid
9 eligible are now currently working and have other sources
10 of income from working, correct?

11 A. I have no basis to opine.

12 Q. If I could ask you to turn to Tab 14.

13 MR. HAMILTON: I have some final cleanup,
14 Judge, and I'm done.

15 Q. This is Debtor's Exhibit 254. This is an
16 article from a publication that was produced by Milliman;
17 is that correct, Ms. Taranto?

18 A. Yes.

19 Q. Gerold Cole who works at Milliman?

20 A. Yes.

21 Q. He's with their employees benefits research
22 group, right?

23 A. Yes.

24 Q. First paragraph of the article under
25 employees and health savings account says, "In an effort to

1 dope for every escalating cost of healthcare, employers are
2 turning more and more to the concept of consumer driven
3 health plans. The idea behind such plans is that if the
4 employees have a direct monetary interest of healthcare,
5 they will by healthcare just as a rationale consumer buys
6 anything else, that means the employees will try to get the
7 most bang for their healthcare buck." Do you agree with
8 that?

9 A. That's the idea behind closed plans, yes.

10 Q. Last page of the article under other
11 considerations, first paragraph there is a reference to
12 something that Mr. Arkett was talking about earlier about
13 adverse selection. The last sentence says, "To avoid this
14 'adverse selection' an employer could offer only HDHP's."
15 Do you see that?

16 A. Yes.

17 Q. Is that something your company advises its
18 clients as an option they should consider to avoid adverse
19 selection?

20 A. It is one of the options.

21 Q. That your company advises its clients
22 about?

23 A. Informs it's clients, yes.

24 Q. Last paragraph, last sentence "Given the
25 trend to use consumer driven health plans as a key

1 component to controlling escalating health care costs,
2 HSA's will be with us for the foreseeable future." Do you
3 see that?

4 A. Yes.

5 Q. Tab 15?

6 A. Yes.

7 Q. There's this is other Milliman publication
8 from your company?

9 A. Yes.

10 Q. From last fall, life after work the future
11 of retirement security; that's the title?

12 A. Yes.

13 Q. If you could turn to the first page, the
14 next page under the heading consumer driven healthcare
15 taking the long view, an article written by Michael Stern;
16 is that correct?

17 A. Yes.

18 Q. He's with your Milwaukee office
19 specializing in healthcare?

20 A. Yes.

21 Q. The second paragraph there says there's a
22 clear road map. Do you see that?

23 A. Yes.

24 Q. It says, "There is a clear road map to
25 understanding than you might imagine in response to

1 disconcerting spikes in medical costs, ill considered
2 spending uninsured consumers and a general kaleidoscope
3 changes rolling our healthcare system the health insurance
4 industry is realigning toward a consumer based model." Do
5 you agree with that?

6 A. Perhaps directionally, yes.

7 Q. Next tab, Tab 16. This is an employee
8 benefit advisor article from September of of 2006; is that
9 correct?

10 A. Yes.

11 Q. You saw this at your deposition, didn't
12 you?

13 A. Right.

14 Q. Debtor's Exhibit 257. The second paragraph
15 by Ms. Silva "Milliman's 2006 group health insurance survey
16 does indicate a continuing shift to CDH products. A trend
17 advisors believe is an important factor in tightening the
18 belt on health and medical costs." Do you agree with that?

19 A. Certainly the number of consumer driven
20 health plans offered by insurer increase, they are still a
21 very small percent of the total product and offering.

22 Q. And the next paragraph, it's a quote from
23 somebody, it says, "I'm convinced that health savings
24 accounts and health reimbursement arrangements are the
25 future of the healthcare financing in this country because

1 we just can't continue to support what we are doing right
2 now says Rod Rigatta president and COO of the Denver based
3 Gemini Group." Do you see that?

4 A. Yes.

5 Q. Did you agree with his analysis?

6 A. I don't agree or disagree.

7 Q. Okay. Tab 17 an article from the Albany
8 Times Union that you saw at your deposition?

9 A. Right.

10 Q. The fifth paragraph down starts with the
11 word expect more. Do you see that?

12 A. Yes.

13 Q. It says, "Expect more pension plans to be
14 frozen or benefits no longer accrued for the employee or
15 where the employer ends up with insurance annuity to cover
16 wherever was owed to him at the plant's termination. Do
17 you see that?

18 A. Yes.

19 MS. CECCOTTI: Your Honor, objection. This
20 is, despite the fact they we lived through many hours of
21 this at Ms. Taranto's deposition, I think that this is
22 really just cross examination by ambush where she is
23 expected to look at an article that she may have only seen
24 once before and pluck one paragraph out, and counsel is
25 simply trying to read into the record as if offered for its

1 truth, some statement in a newspaper article.

2 MR. HAMILTON: Well, we're going to
3 subsequent quotes in this article by her firm, Milliman,
4 regarding pension plan increases.

5 THE COURT: I've noticed that. And Mrs.
6 Ceccotti, I also note that in the scheme of things, he's at
7 the very last exhibit.

8 MS. CECCOTTI: I understand.

9 THE COURT: So it appears we are only going
10 to tolerate this for one last question.

11 MS. CECCOTTI: I understand that, Judge.
12 But I would I would also like to say that I don't believe
13 that Ms. Taranto has opined in her declaration on pension
14 issues.

15 MR. HAMILTON: No, but her firm has, Judge.

16 MS. CECCOTTI: She is here for her report
17 which doesn't discuss pension issues.

18 MR. HAMILTON: On your direct. On my cross
19 she is.

20 MS. CECCOTTI: No. On your cross she is
21 here beyond the scope of her direct, even broadly defined.

22 THE COURT: Well, we are getting into areas
23 where Milliman, her employer, her organization, with which
24 she should be very, very familiar and which apparently she
25 is familiar, I don't see that she is being tasked with

1 looking at something strange, she is being directed to
2 individual areas where Milliman is has taken a position.

3 Your objection is overruled, and confine
4 yourself to this last exhibit.

5 MR. HAMILTON: All right. I had two more
6 exhibits, but I'll just end on this one.

7 BY MR. BENNETT:

8 Q. The second page of this article, Ms.
9 Taranto, middle of the page we identified who we were
10 talking about, a guy named Rosco Haines. It starts with
11 the words posting such shortfalls on the balance sheet. Do
12 you see that paragraph?

13 A. Yes.

14 Q. And then it identifies Rosco Haines, a
15 consulting actuary and principal at the Albany office of
16 benefits consultants Milliman. That's your company, is
17 that correct?

18 A. Yes.

19 Q. And going to the next page, page 3 at the
20 very bottom we are quoting Mr. Haines. And the paragraph
21 says, "Still the perception of pension plans as 'dinosaurs'
22 and 401(k) plans as 'the way of the future' is an attitude
23 that's pervasive, Haines said, and it's one that's likely
24 to speed the demise of the traditional pensions, shifting
25 the responsibility savings for retirement to employees from

1 employers." Do you agree with your colleague's statement
2 there?

3 MS. CECCOTTI: Your Honor, I'm going to
4 object again, because again we are given this quote, if it
5 is indeed an accurate quote, by someone who is not here to
6 tell us if it is or not, in the context of an article that
7 has been prepared by someone at the Albany Times who is
8 interested in making a point and either quoting correctly
9 or incorrectly a subject.

10 MR. HAMILTON: All I asked her is whether
11 she agreed with it or not, Judge.

12 MS. CECCOTTI: Again, I have no reason, we
13 have no basis here today to say that that is, A, an
14 accurate quote, B, part of a larger thought that the author
15 left on the cutting room floor. I don't even know what
16 word to describe except appropriate.

17 MR. HAMILTON: I'll withdraw it, Judge.

18 THE COURT: Very well.

19 BY MR. BENNETT:

20 Q. Final question, let's go to your
21 supplemental declaration, paragraph 4. This is Tab 4 in
22 your cross examination binder, Tab 4, paragraph 4, third
23 sentence you say, "Simply put, the union has already
24 provided concessions to Dana that decrease Dana's liability
25 by close to 40 percent." That's a reference to the caps

1 that Dana's unions and employees have agreed to, correct?

2 A. Yes.

3 Q. Isn't it also true that Dana's salaried
4 employees and nonunion hourly's have also made similar
5 prepetition concessions regarding their retiree benefit,
6 right?

7 A. I've not seen the calculation of the
8 valuation of such.

9 Q. Do you have any reason to believe that the
10 value of their concession on caps is less than the 40
11 percent figure that you swear in your declaration here?

12 A. I have not been provided with data as to
13 what that's worth.

14 MR. HAMILTON: No further questions, your
15 Honor.

16 MS. CECCOTTI: Your Honor, may we have a
17 few moments to decide whether we want to do any redirect?

18 THE COURT: Sure.

19 Let's take a five minute recess.

20 (Recess taken)

21 MS. CECCOTTI: I just have a few questions.

22 REDIRECT EXAMINATION BY MS. CECCOTTI:

23 Q. Ms. Taranto, do you know whether Watson
24 Wyatt releases its full studies?

25 A. Yes.

1 Q. Do they release it?

2 A. Yes, they do.

3 Q. How do they release it?

4 A. You can purchase it.

5 Q. Can Milliman purchase it?

6 A. They do not like to release their results
7 comparisons to their competitors.

8 Q. Now, GM, counsel referred to the fact that
9 GM as has a VEBA, and that's the case that you participated
10 in?

11 A. Correct.

12 Q. Do you know how much money GM is obligated
13 to fund the VEBA with ?

14 A. I believe 3 billion dollars.

15 Q. Three billion dollars?

16 A. Billion dollars.

17 Q. Thank you. And is that the only feature of
18 the GM modified plan?

19 A. No.

20 Q. GM hasn't eliminated its obligation to
21 provide for post retirement healthcare, has it?

22 A. No.

23 Q. Under the GM modified setup? Sorry.

24 A. No.

25 Q. Now Dana's proposal in this case at the

1 time that you prepared your declaration were you given any
2 information from anybody regarding the likely amount to be
3 funded while under Dana's proposal?

4 A. No, I was not.

5 Q. Are you aware that the proposal called for
6 a percentage of monthly average costs as an advance against
7 something called an allowed claim?

8 A. I recall that. I believe it was 30 percent
9 of the allowed cost against the claim.

10 Q. Okay. And were you aware that the allowed
11 claim amount under Dana's proposal is an amount which would
12 be determined through litigation in the Bankruptcy Court?

13 A. Yes.

14 MS. CECCOTTI: That's it. Thank you.

15 MR. HAMILTON: No cross, your Honor.

16 THE COURT: Thank you ma'am.

17 (Witness excused)

18 MR. LEVINE: Your Honor, the unions at this
19 time would like to call Miguel Foster as their next
20 witness. And I'll be switching with Mrs. Ceccotti.

21 THE COURT: Fine.

22 M I G U E L F O S T E R, called as a witness,
23 having been first duly sworn by the Notary
24 Public, Denise Nowak, was examined and testified
25 as follows:

1 MR. LEVINE: May I proceed, your Honor?

2 THE COURT: Yes, please.

3 DIRECT EXAMINATION BY MR. LEVINE:

4 Q. Good afternoon, Mr. Foster.

5 A. Good afternoon.

6 Q. By whom are you employed, sir?

7 A. It's international union UAW.

8 Q. And in what capacity are you employed by
9 the UAW?

10 A. My title is international representative.

11 Q. Do you work in any particular department of
12 the UAW?

13 A. Yes, I work in what's called the
14 competitive shop IPS department.

15 Q. What is that department, briefly?

16 A. That department deals with auto part
17 suppliers.

18 Q. And is Dana considered an auto parts
19 supplier, such that it would be encompassed by the division
20 in which you work by the UAW for purposes of representing
21 employees of that company?

22 A. That's correct.

23 Q. What are your responsibilities generally as
24 an international representative in that department?

25 A. My responsibilities include bargaining

1 contracts, attending grievance hearings, advocate
2 arbitration hearings as it relates to Dana. I also
3 coordinate what's called the Dana union counsel, the UAW
4 Dana union counsel, excuse me, which consists of all the
5 Dana local union plants where we meet pretty much semi
6 annually and share information, build bargaining strategies
7 and so forth.

8 Q. And how long have you worked on with that
9 UAW Dana counsel?

10 A. I was assigned to it in October of 2006.

11 Q. How long have you served as an
12 international representative?

13 A. A full time international representative
14 since October 2004.

15 Q. And let me just take you back and ask you
16 to briefly summarize what you've done since high school?

17 A. After high school I went to on to Michigan
18 State University where I earned a bachelor of science
19 degree. After that I was employed by had you had sons
20 department store as a shoe salesperson. I then went on to
21 work for a real estate development company called EL
22 Associates where I was a property analyst. After that I
23 was employed by Perfection Steel Treaty as a furnace
24 operator.

25 Q. When was that, sir?

1 A. 1994.

2 Q. Were you working in a shop that was
3 represented by auto workers?

4 A. Yes.

5 Q. And was that your first exposure to the
6 auto workers as a member of the union?

7 A. Yes.

8 Q. What was your position there?

9 A. I was hired in as a furnace operator, I was
10 then elected chair person of the bargaining committee.

11 Q. And by whom were you elected?

12 A. By my coworkers, the UAW members.

13 Q. When was that approximately?

14 A. That was late 1994.

15 Q. How many union members were in that shop?

16 A. Approximately 150.

17 Q. Members of the bargaining unit?

18 A. Yes members of the bargaining unit.

19 Q. I was supposed on to say that and not union
20 members, right?

21 A. You're right.

22 Q. What were your responsibilities your non
23 UAW responsibilities at that time?

24 A. At that time, as I said I was a furnace
25 operator and my duties included running a heat treat

1 furnace loading unloading doing inspections. Also I did
2 some maintenance on the furnaces, loaded, unloaded trucks,
3 so I have a had a variety of responsibilities.

4 Q. How long did you work in that capacity?

5 A. As a furnace operator about a year and a
6 half.

7 Q. Did there come a time when your
8 responsibilities changed for the company?

9 A. I then came became what was termed as a
10 team leader.

11 Q. How, if at all, did your responsibilities
12 change when you became a team leader?

13 A. As a team leader we were kind of unique at
14 Perfection Steel where we had teams that ran operations and
15 we were a self directed workforce, and as a team leader I
16 directed the work force, in a nutshell.

17 Q. How long did you serve in that capacity?

18 A. Until 2000.

19 Q. What if anything happened in 2000?

20 A. In 2000 I was assigned to be a temporary
21 organizer by the UAW.

22 Q. And did you cease being employed by the
23 company at that point?

24 A. I did not. I was officially on a union
25 leave of absence.

1 Q. What does that mean?

2 A. That means at the time being elected or
3 appointed to a position in the union, I still retained by
4 seniority rights at my home plant.

5 Q. And did you ever go back to your home
6 plant?

7 A. I have not.

8 Q. Is it fair to say since 2000 you have
9 worked for the auto workers in one capacity or another?

10 A. Yes.

11 Q. Could you describe the various union
12 positions have you held since 1994? You understand the
13 distinction as opposed to your work responsibility for the
14 company?

15 A. Yes. In 1994 I was elected chair person of
16 my bargaining unit. I was reelected two more terms. I was
17 then, as I statement the earlier assigned temporarily
18 assigned as an organizer for its UAW in 2000. I was also
19 assigned as what we call the cap committee chair person
20 which deals with the political action committee we in my
21 local union. Then approximately in -- I'm sorry in 2003 I
22 was assigned servicing repetitive at my local union. And
23 then in October of 2004 I was assigned permanent
24 international rep under the direction of vice president Bob
25 King.

1 Q. And do you report to Mr. King?

2 A. I do.

3 Q. Do you report to anybody else?

4 A. I do.

5 Q. Who else do you report to?

6 A. I also report to Wendy Fields-Jacobs Bob
7 King's top administrative assistant. I also report to Roy
8 King who is assistant director, I also report to Rick
9 Isaacson who is also an administrative assistant in the
10 competitive shop IPS department.

11 Q. As an international representative in the
12 auto parts division, we'll call it that for the sake of
13 understanding, were are you given a specific geographical
14 division in the United States of America?

15 A. No.

16 Q. Responsibilities are national and focused
17 on the auto parts industry?

18 A. That's correct.

19 Q. What, if any, experience have you had with
20 the company involved in this proceeding, that is Dana
21 Corporation?

22 A. I've been involved with Dana, as I said,
23 since my assignment in October of 2006. I've been involved
24 in bargaining of the UAW master agreement, I've also been
25 involved in coordinating the Dana counsel, I've been

1 involved with various meetings dealing with those issues.
2 I've been involved with taking phone calls from retirees
3 from Dana I've been involved in grievance hearings with
4 Dana Corporation.

5 Q. And when you say that you've been involved
6 in taking phone calls from Dana retirees, could you
7 elaborate on what you mean?

8 A. Yes. On a daily basis when I'm in the
9 office I receive phone calls from retirees asking questions
10 about their benefits and so forth. And it has escalated
11 since the bankruptcy proceedings began. I'm sorry since
12 Dana filed for bankruptcy. The number of calls from
13 retirees have increased dramatically. So I try to give the
14 retirees advice.

15 Q. And have you been involved at all in
16 negotiations with Dana corporation since October of 2006,
17 or before that for that matter?

18 A. Beginning in late November I was involved
19 with bargaining with Dana, but not prior to that.

20 Q. And by the way when you are talking about
21 the master agreement you referred to a master agreement
22 where what agreement are you referring to?

23 A. The UAW master agreement includes two
24 active plants, the Lima Ohio plant and the Pottstown
25 Pennsylvania plant, and it also covers retirees from

1 previously closed plants.

2 Q. Now, as part of your responsibilities,
3 what, if anything, are you required to do in terms of
4 becoming knowledgeable about collective bargaining
5 agreements applicable to Dana employees represented by the
6 UAW?

7 A. Some of the things I did to become
8 knowledgeable about Dana was of course I read and
9 researched current agreements and previous agreements, I've
10 had discussions with previous international reps that were
11 involved with Dana; things of that nature.

12 Q. Have you, in the course of your
13 responsibilities with respect to Dana become familiar with
14 any of the history of the lip relationship between the
15 united auto workers and Dana Corporation?

16 A. I have.

17 Q. And could you describe the type of history
18 historical inquiries you have made in that respect?

19 A. I've learned that over the years Dana used
20 to have in excess of 20 plants in the master agreement, and
21 now we are in the down to two plants that the UAW
22 represents. I've learned about the struggles that the
23 union and the company have went through together, and the
24 members have sacrificed over the years by giving
25 concessions or wage freezes at the various plants in order

1 to help enhance Dana's competitive position in the
2 industry.

3 Q. I'd like you to refer, please, to what's
4 been marked as the Union Exhibit 4, which your Honor is
5 behind Tab 101?

6 MR. LEVINE: Which, your Honor, is behind
7 Tab 101. Yes, behind to be 101, yes, that is correct. I'm
8 sorry, your Honor.

9 Q. Is that a document that you are familiar
10 with, Mr. Foster?

11 A. Yes.

12 Q. And what is Union Exhibit 4?

13 A. This was my declaration.

14 Q. And have you reviewed the declaration and
15 can you testify as to its accuracy or lack thereof at this
16 point?

17 A. Yes, I reviewed it. I just had one
18 addition, paragraph 4 on page 3, the first line where it
19 says these employees works in 13 different facilities
20 located in six states. I omitted Pennsylvania, so it
21 should be seven states.

22 Q. And did you indicate that Pennsylvania was
23 part of this at another point in your declaration?

24 A. Yes, further down. The third sentence
25 where I talked about Pottstown, Pennsylvania.

1 Q. And there is an Exhibit A to your
2 declaration, is there not?

3 A. There is.

4 Q. And are there any corrections that you
5 might want to make with respect to documents included in
6 Exhibit A?

7 A. Yes. In Exhibit A, there is a letter to
8 Mr. Bueter dated February 16th 2007 from Mr. Potok, and I
9 had not seen this letter prior to my declaration.

10 Q. Your Honor?

11 MR. LEVINE: Your Honor, with those
12 caveats, we nonetheless would ask that Union Exhibit 4 be
13 received into evidence.

14 MR. HAMILTON: This is a declaration?

15 MR. LEVINE: Right.

16 MR. HAMILTON: Your Honor, I have an
17 objection to just two sentences in the declaration that I
18 believe are inadmissible hearsay. He's not an expert.

19 Paragraph 8 talks about PDF files being
20 provided but not the Microsoft Excel sheets. And at the
21 top of page 9 there are two sentences in that paragraph
22 that say, "On the other hand, with the PDF versions of
23 those files as opposed to the actual Excel files, the
24 union's actuaries, not Mr. Foster, but the union's actuary
25 were only able to read the files as is, hence the actuaries

1 were prevented from performing tasks necessary.

2 He's not the union's actuaries, I don't
3 believe that statement is correct, I can't cross examine
4 him because it's not his, it's the actuary's. The actuary
5 was just on the stand and said she got all the information
6 and didn't replicate the actuarial figures because it was
7 out of the scope of her engagement.

8 MS. CECCOTTI: That's not what she said.

9 MR. LEVINE: All right.

10 MR. HAMILTON: That may be. My only point
11 is that those two sentences are hearsay, and I object to
12 those going in the record. The rest of the declaration I
13 have no objection.

14 MR. LEVINE: Your Honor, I would be
15 happy to elaborate the foundation to which the witness is
16 able to represent that as part of the ordinary scope of his
17 responsibilities, and I will represent to the court right
18 now that the actuary to whom Mr. Foster refers is not the
19 prior witness.

20 MR. HAMILTON: It's still hearsay and I
21 object. No matter who it is, it's hearsay.

22 MR. LEVINE: I'm sorry, I apologize, Mr.
23 Hamilton.

24 MR. HAMILTON: He's not the actuary, and
25 he's purporting to testifying under oath what they were or

1 not able to do, and I can't cross examine him on that
2 because he's not the actuary; it's hearsay.

3 MR. LEVINE: I hate to inject reality into
4 this proceeding, but Mr. Foster was deposed and was deposed
5 at length about the basis of his knowledge of everything in
6 his declaration.

7 And again, your Honor, I am happy to talk
8 to Mr. Foster before the document is admitted with respect
9 to the basis for his knowledge of that statement. And, of
10 course, that's not necessarily true, but this is his
11 understanding, and I can explore that.

12 MR. HAMILTON: It's not a foundation
13 objection, your Honor, it's a hearsay objection. It
14 doesn't matter what --

15 THE COURT: I'm going to sustain the
16 objection. He cannot possibly be cross examined about the
17 abilities or inabilities of the a third party who is not
18 here. And actually, I don't see it as being very harmful
19 in any event, but this is a example, gentlemen, of much ado
20 about nothing.

21 MR. LEVINE: I didn't raise the issue. We
22 will proceed without those two sentences involving the
23 unions actuaries. It is my understanding that subject to
24 the --

25 THE COURT: The document is received

1 subject to that excisement.

2 (Whereupon, Union Exhibit 4 was received in
3 evidence as of this date)

4 MR. LEVINE: Thank you, your Honor.

5 BY MR. LEVINE:

6 Q. Now, Mr. Foster, in paragraphs 5 and 6, you
7 discuss various initiatives taken by the united auto
8 workers in connection with efforts to assist Dana
9 economically and competitively. Do you see that?

10 A. Yes.

11 Q. How did you acquire familiarity with those
12 events?

13 A. Through discussions with other
14 representatives who worked on the Dana assignment, and
15 through viewing some of the agreements that I mentioned.

16 Q. You testified that you have participated in
17 negotiations with Dana since the fall of 2006; is that your
18 testimony?

19 A. Yes.

20 Q. Now have you participated in every session,
21 every negotiating session where both the company officials
22 and the union officials have met?

23 A. Have I not.

24 Q. Could you tell the court about the
25 parameters within which you have participated personally in

1 negotiations?

2 A. I have mainly participated in negotiations
3 when the bargaining committees were also present. There
4 were at times where there were high level meetings with
5 persons like vice president Bob King and Wendy
6 Fields-Jacobs that I was not a part of.

7 Q. Did you participate in negotiations on
8 March 19th?

9 A. I did.

10 Q. To your knowledge, what, if anything, have
11 the parties agreed to do across the table with respect to
12 continued negotiations?

13 A. The parties agreed to continue bargaining.

14 Q. And what, if anything, are you familiar
15 with across the table? Do you know what I mean by across
16 the table?

17 A. I do.

18 Q. With respect to statements made by
19 representatives of the united auto workers or the steel
20 workers and their respective preparedness to strike?

21 A. It has been indicated from the UAW and the
22 united steel workers that the members of our Dana
23 facilities are prepared to strike to protect our standard
24 of living if the parties are unable to reach a conclusion.

25 Q. Have you been involved in any strikes, Mr.

1 Foster, as an employee of the united auto workers?

2 A. I have participated in strikes.

3 Q. Could you just briefly describe which
4 strikes you've participated in and what you've done in
5 connection with those strikes?

6 A. I was involved in a strike with Johnson
7 Controls Incorporated at the Plymouth, Michigan facility, I
8 was also involved in a strike with Johnson Controls in
9 Ohio, I can't remember the city. And I was involved in a
10 strike with a company called Skyway Precision in, I
11 believe, it's Livonia, Michigan, and I believe I was just a
12 participant; I didn't coordinate the strike, I just
13 participated and walked the strike line with my fellow
14 union members.

15 Q. And what, if any, roll do the union members
16 themselves have with respect to decisions to strike or not
17 to strike?

18 A. In the UAW, the members vote to ratify a
19 strike.

20 Q. Has such a vote been taken at this point?

21 A. Yes. There were votes taken at the two
22 master facilities Lima, Ohio and Pottstown, Pennsylvania
23 prior to us engaging in master negotiations.

24 Q. And could you describe the relationship if
25 any between the master negotiations and the so-called 1113

1 negotiations?

2 A. We began, as I said, we began negotiations
3 in November, late 2006 with the master agreement, which
4 again dealt with Lima, Ohio and Pottstown, Pennsylvania,
5 and retirees from plants which closed. Obviously we
6 discussed issues dealing with those plants and those
7 retirees.

8 We also continued the negotiations and the
9 lines kind of cross into the 1113, 1114 negotiations where
10 we've had a lot of discussion about those issues also.

11 Q. Do you have an understanding as to what
12 happens to the terms and conditions of employment with
13 respect to the Lima and Pottstown employees in the event
14 the court grants the debtors their requested relief and the
15 contracts are rejected?

16 MR. HAMILTON: Well, I think I'm going to
17 object. I don't believe we requested relief to reject
18 contracts at Lima and Pottstown.

19 MR. LEVINE: Then I'll rephrase the
20 question, because that's precisely what I did not intend to
21 ask.

22 MR. HAMILTON: Okay.

23 MR. LEVINE: I withdraw my question and
24 respect your objection and duly note that I apologize.

25 Let me try again.

1 BY MR. LEVINE:

2 Q. Do you have an understanding as to what
3 happens to the master agreement that pertains to the Lima
4 and Pottstown facilities in the event that the court grants
5 the debtors the relief that they are requesting?

6 A. Nothing happens to the Lima or Pottstown
7 agreements in 1113.

8 Q. And how many employees order of magnitude
9 are, or if you know, are employed at who Lima and
10 Pottstown?

11 A. Approximately 600.

12 Q. Were you present at negotiations between
13 Dana and the auto and/or steel workers on or about January
14 19th, 2007?

15 A. I don't recall that date. It's possible.

16 Q. Are you aware that a counter proposal or a
17 written proposal was tendered by Dana at or about that time
18 to the united auto workers?

19 A. I did do not know a written proposal was
20 submitted to the union at that time.

21 Q. Did there come a time that you did become
22 aware of that?

23 A. I did become aware of that during my
24 deposition. I knew that around that time there was a high
25 level meeting and there was discussions about the OPEB and

1 how to resolve the OPED and I wasn't involved in those
2 decisions.

3 I was always under the assumption that it
4 was an off the record discussion, which is common in
5 collective bargaining, and I didn't realize that a written
6 proposal had been submitted until the day of my deposition.

7 Q. Do you have any responsibilities for
8 employees represented by the auto workers who are employed
9 by a company called Tower Automotive?

10 A. I do.

11 Q. Was Tower Automotive involved in a 1113
12 before this court at some point?

13 A. Yes.

14 Q. When was that?

15 A. That was in 2006, I believe, February.

16 Q. And what role if any did you have with
17 respect to negotiations between Tower and the united auto
18 workers coincident with the 1113 proceeding?

19 A. Very similar as I do with Dana. I was
20 involved in bargaining at Tower Automotive, I also
21 coordinated our UAW Tower Automotive counsel, day to day
22 communications with the locals and so forth.

23 Q. Now, are you aware of whether there was a
24 hearing in this court in Tower?

25 A. Yes, there was.

1 Q. Are you aware of when that hearing was
2 completed?

3 A. Yes.

4 MR. HAMILTON: Your Honor, at this point I
5 don't know where he's going with this.

6 MR. LEVINE: A couple more questions.

7 MR. HAMILTON: We're trying this case, not
8 Tower.

9 THE COURT: If that's a relevance
10 objection, I'll allow it subject to connection.

11 One or two more questions.

12 MR. LEVINE: Thank you, your Honor.

13 BY MR. LEVINE:

14 Q. Were the united auto workers and Tower able
15 to obtain a settlement?

16 A. Yes.

17 Q. Was there a decision rendered by the Judge?

18 MR. HAMILTON: Your Honor, at this point
19 I'm going to object again on relevance.

20 THE COURT: I'm going on sustain the
21 objection.

22 MR. LEVINE: That's all I have.

23 MR. HAMILTON: No cross.

24 THE COURT: Thank you, sir.

25 (Witness excused)

1 THE WITNESS: Thank you.

2 MR. LEVINE: Your Honor, Mr. Potok is our
3 next witness. Is it possible that we could either take a
4 lunch break or have a brief recess?

5 THE COURT: If we take a lunch break it
6 will be a half hour lunch break.

7 MR. LEVINE: That's fine.

8 THE COURT: A half hour, that means five
9 after 1.

10 (Whereupon, a recess was taken for the
11 purpose of luncheon.)

12 Time noted: 12:35 p.m.

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1 A F T E R N O O N S E S S I O N

2 (Time noted: 1:10 p.m.)

3 L E O N P O T O K, called as a witness, having been
4 first duly sworn by the Notary Public, Denise
5 Nowak, was examined and testified as follows:

6 MR. LEVINE: May I proceed, your Honor?

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION BY MR. LEVINE

9 Q. Will you state your name for the record?

10 A. Leon Potok.

11 Q. Mr. Potok, by whom are you employed?

12 A. Potok and Co., Inc.

13 Q. And what do you do at Potok and Co.?

14 A. Essentially we are financial advisors to
15 labor unions and provide advisory services largely in
16 connection with bankruptcies.

17 THE COURT: Could you speak louder, sir, or
18 move closer to the microphone?

19 MR. LEVINE: Yes, pull it closer.

20 Q. Okay. Could you tell us what Potok and Co.
21 does?

22 A. We serve as financial advisers essentially
23 to labor unions, and largely in connection with
24 negotiations, especially in corporate restructuring and
25 bankruptcies.

1 Q. Have you ever testified in the capacity as
2 expert witness in a bankruptcy proceeding before?

3 A. Yes.

4 Q. And when and what was that?

5 A. That was Tower Automotive in March of 2006.

6 Q. Is that a case that was in this court?

7 A. Yes.

8 Q. Could you please describe your educational
9 background?

10 A. I have a BA in economics from City College
11 of New York, an MA in economics from the University of
12 Massachusetts at Amherst, and an MBA in finance from the
13 school of business at Columbia University.

14 Q. And would you describe your work history
15 generally, similarly and chronologically that you can?

16 A. My career I started working for the UAW in
17 Detroit from 1977 to 1984. I was an economist -- my title
18 was research associate, and much of my work was related to
19 providing financial advice in connection with negotiations
20 and organizing, largely negotiations and heavily in
21 situations where companies were requested modification in
22 collective bargaining agreements or in negotiations in
23 connection with financial problems.

24 I then attended business school and worked
25 for three and a half years for an insurance company, New

1 York Life Insurance Company, and my job there was lending
2 monitoring investments in what was called risk capital,
3 which covered leverage buyouts, venture capital in oil and
4 gas both directly and indirectly through partnerships.

5 I then went to work for a firm called
6 Keilin and Bloom in 1990, which was financial advisor to
7 labor unions.

8 Q. By the way, who is the Bloom in the Keilin
9 and Bloom?

10 A. That would be Ron Bloom, who subsequently
11 and became special assistant to the president at the united
12 steel workers.

13 Q. Is that his current position?

14 A. That is his current position.

15 Q. Do you know if he's one of the negotiators
16 in this case?

17 A. Yes.

18 Q. I'm sorry, proceed.

19 A. I subsequently left Keilin and Bloom for a
20 six month, seven month period where I worked for a firm
21 called American Capital Strategies, which is a closed end
22 fund publically held that makes investments.

23 Apart of from that I was a partner in a
24 couple of entities, all of which served in the same role as
25 advisor to labor unions.

1 Q. And is that --

2 A. And that's the work I do now.

3 Q. All right, thank you. In connection with
4 the work that you do now as what you've done in the past,
5 do you advise in connection with collective bargaining?

6 A. Yes.

7 Q. And do you ever participate in actual
8 collective bargaining on behalf of the unions whom you
9 represent?

10 A. Yes.

11 Q. Have you advised these unions in corporate
12 restructuring context?

13 A. Yes.

14 Q. Do you have experience in advising unions
15 in the bankruptcy context when collective bargaining is
16 taking place?

17 A. Yes.

18 Q. Do you have experience in identifying and
19 working with potential equity sources in your capacity as
20 advisor to unions and otherwise?

21 A. Yes.

22 Q. I'd like you to turn, please, to Exhibit A
23 of your declaration and expert report which has been
24 marked, it's in the binder there, Mr. Potok, it's behind
25 Tab 2.

1 A. Yes.

2 Q. I was asking you to refer to Exhibit A, Mr.
3 Potok. Do you have that?

4 MR. LEVINE: May I approach the witness?

5 THE COURT: Go ahead.

6 MR. TAMBE: I note there's a binder with
7 some sticky's sticking out in front of the witness, and if
8 it's a marked binder, I would object to it being in front
9 of the witness.

10 MR. LEVINE: I apologize, your Honor.

11 THE COURT: There's an entry with respect
12 to the other binder that's been marked?

13 You are not referring to that binder, are
14 you, counselor?

15 MR. LEVINE: No, I am not.

16 MR. TAMBE: It was up there in the witness
17 chair.

18 MR. LEVINE: He might have to refer to it
19 later.

20 MR. TAMBE: If he's going to refer it to
21 it, I would like the sticky's to be taken out of it. Plus
22 if there are any other markings in it.

23 MR. LEVINE: Would you like to check? I
24 didn't put any markings there.

25 I'll represent to the court that I did not put any markings

1 in this binder and I am handing it to the witness.

2 BY MR. LEVINE:

3 Q. Mr. Potok, would you look at Exhibit A,
4 please, of Union Exhibit 2?

5 A. Yes.

6 Q. And could you give a couple of
7 representative examples of cases where you have represented
8 unions as financial advisor based on the list that is
9 contained in Exhibit A?

10 A. Sure. Let me start with very first 1113
11 proceedings I was involved in, it was involved in this
12 building LTV Steel in 1993. It was LTV 1.

13 Q. What did you do?

14 A. We -- Keilin and Bloom served at financial
15 advisers to the steel workers in connection with the 1113
16 1114 hearings in that case.

17 Others I can point to would be Tower
18 Automotive, about a year ago, also an 1113, 1114, where I
19 served as an expert witness. Others, Kaiser Aluminum,
20 Special Metals, those are -- and Ormet Aluminum as the
21 other 1113, 1114 cases that I've been involved in as
22 advisor to, in all cases, for the united steel workers.

23 MR. LEVINE: Your Honor, I move to qualify
24 Mr. Potok as an expert with on matters pertaining to
25 corporate restructuring and corporate financing in the

1 collective bargaining context.

2 MR. TAMBE: Your Honor, we have a few
3 objections to him to be provided in that capacity.

4 First of all, we have been precluded from
5 examining Mr. Potok on any topic related to his other role,
6 the other hat he wears in this proceeding, which is as an
7 advisor in negotiations in the collective bargaining
8 process. So I trust there will be no opinions or
9 statements offered by Mr. Potok concerning his other role,
10 if he can separate those roles.

11 Secondly, there are the two other issues
12 that I trust he will not be offering any opinions on. One
13 is that we were precluded from asking any questions at his
14 deposition into an analyses that he has conducted into the
15 savings that the company would realize under the 1113
16 proposals at the five plants that are at issue. He has
17 conducted such an analyses, we were not provided with that
18 analysis, and we were not allowed to ask any questions at
19 his deposition about that analyses.

20 And finally, I trust he will not be
21 offering any opinion or any statement on any quantitative
22 analyses he may have done comparing Dana's performance to
23 its peer companies. Again, he has --

24 THE COURT: Comparing Dana?

25 MR. TAMBE: To its peer companies, the

1 other automotive parts suppliers. Again, he has conducted
2 such an analyses he has not provided that analyses to us,
3 and at his deposition we were not aloud to ask any
4 questions about what that analysis shows.

5 I can draw your Honor's attention to the
6 relevant pages of the deposition. It's only an issue if
7 they are going to offer opinions and statements on those
8 topics. I trust they are not.

9 MR. LEVINE: And you trust correctly.

10 Perhaps we could have saved some time,
11 again, if you asked me before. But the report is before
12 the debtors, has been before the debtors, and that is what
13 we intend to examine this witness on. And I don't believe
14 any of those three matters are on before the court based on
15 that report.

16 THE COURT: Well, subject to appropriate
17 objection at the appropriate time.

18 MR. TAMBE: Thank you, your Honor.

19 MR. LEVINE: With reservations of our
20 rights.

21 THE COURT: Yes. I do have a problem with
22 the designation of his expertise in the general field of
23 instruction. I don't know that I've heard any such
24 qualification. If you want to narrow that, I think it
25 might lessen the problem.

1 MR. LEVINE: I believe that I did, your
2 Honor. I could go through more of his experience.

3 THE COURT: Restructuring is a very general
4 term.

5 MR. LEVINE: Well, I talked about
6 restructuring in the collective bargaining context, your
7 Honor.

8 THE COURT: I didn't hear that it was
9 related to that specific context.

10 MR. LEVINE: Yes, your Honor, that's what
11 we are offering him on.

12 THE COURT: Very well. I will admit him as
13 qualified in that area.

14 MR. LEVINE: Would you like me to repeat
15 what, so that there's no confession in the record, or is
16 that not necessary?

17 THE COURT: No. I just thought I heard you
18 qualify him very broadly in the reconstruction field.

19 MR. LEVINE: Understood. Thank you, your
20 Honor.

21 BY MR. LEVINE:

22 Q. Now, did there come a time when you were
23 asked to represent the auto workers and the steel workers
24 in this proceeding?

25 A. Yes.

1 Q. And when, with respect to both unions, were
2 you asked to get involved in this proceeding in any way?

3 A. In the 1113 proceeding, sometime in
4 January, early February.

5 Q. And were you asked to prepare an expert
6 report at that time?

7 A. Yes.

8 Q. What were you asked to report on with
9 respect to that expert report?

10 A. As to the adequacy of information provided
11 to the unions to be able to negotiate, and to the necessity
12 of the company's proposals in order to reorganize, in
13 general terms.

14 Q. And what, if anything, did you conclude in
15 your report?

16 A. Based on the information provided to us up
17 to that point I concluded, A, that the unions had not been
18 provided sufficient information, B, that their plans seemed
19 to be, or were, and have been, to substantially eliminate
20 substantial numbers of jobs in the union plants.

21 And thirdly, that the necessity for the
22 proposal may or may not be the case, based on additional
23 information to be provided, may or may not be required
24 based on additional information.

25 Q. Anything else?

1 A. No.

2 Q. Mr. Potok, would you please turn to your
3 expert report beginning on page 4?

4 A. Yes.

5 Q. Now, beginning on that page you discuss
6 Dana's domestic footprint as you believe it will be in the
7 relatively near future. Could you take us through what
8 your findings and observations were with respect to Dana's
9 domestic footprint?

10 A. The company's 1113 proposals covered 13
11 plants. Of those 13, six were facilities that were to be
12 sold in fairly short order, and therefore I didn't see the
13 necessity of 1113 proceedings on that -- for those
14 facilities.

15 Of the remaining seven, I concluded that,
16 based on information provided by the company, that two of
17 those facilities would shut in share fairly short order, a
18 third one would be downsized substantially over time, and
19 eventually would be downsized to the point of being
20 completely nonviable and that too would be shut at some
21 point. And the fourth one was likely to be downsized at
22 some point as well.

23 Q. And how many plants, if any, in your
24 estimation would that leave? And could you identify what
25 those which plants you are referring to?

1 A. Going down the list on page 5, I believe
2 Fort Wayne under the company's plan would be substantially
3 downsized, hourly employment would decline from 420 or
4 thereabouts, 405, to down to fewer than 200. The target
5 was 175 by the year 2000. And for a plant that only five
6 years ago had 2000 hourly employees, I concluded that it
7 was very unlikely that come 2010, 2011, the company would
8 look at Fort Wayne and determine that it was viable long
9 term. The cost structure I would expect would be such that
10 it would be -- that the plant would not be viable not be
11 competitive at that point.

12 Auburn Hills will stay, Lima, Ohio and
13 Marion, Indiana, those two plants the company has said that
14 one or the other will be shut in short order. And planning
15 documents provided to us indicate that the second will be
16 shut subsequently within couple of years.

17 Pottstown would remain, Elizabethtown would
18 remain, and Henderson, Kentucky would likely be downsized.

19 Q. Turning back to Fort Wayne, why is it, in
20 your opinion, that Fort Wayne will survive as a viable
21 plant after the continuing reduction that you anticipate?

22 A. It would be -- I haven't been there, but a
23 plan that houses 2000 hourly employees, even, and I
24 understand that one or two of the buildings have been taken
25 down, of the remaining facilities, I don't think it would

1 be viable in such a large facility with equipment spread
2 out and handling requirements and heating requirements and
3 lighting requirements, it's simply -- you don't see those
4 kinds of facilities lasting for very long.

5 Q. And turning to page six paragraph 19, is it
6 fair to say that that reflects your understanding and your
7 belief as to what will remain of Dana's unionized
8 facilities within the next few years?

9 A. The three facilities mentioned, Auburn
10 Hills, Elizabethtown and Pottstown, would remain under the
11 company's current plan in substantially the form and size
12 they are now. Henderson would still be around, but long
13 term there are plans to move some assemblies out of
14 Henderson, it's unclear how much employment will remain
15 there.

16 Q. What is the basis of your understanding
17 with respect to what you believe will happen at Henderson?

18 A. Again, internal company documents, planning
19 documents.

20 Q. How, if at all, does that footprint that
21 you anticipate which -- how, if at all, did that footprint
22 that you anticipate influence your opinion as to the
23 necessity of the company's requested relief under Sections
24 1113 and 1114?

25 MR. TAMBE: Objection, your Honor. This is

1 outside the scope of his both his expert report, his
2 testimony, and the information that we've been provided.

3 We have been provided no analyses by this
4 witness on that topic, non whatsoever, no information on
5 that analysis. You'll find none in his expert report.

6 MR. LEVINE: I could go through the expert
7 report, your Honor. Maybe I should do that, and I'll
8 withdraw the question.

9 THE COURT: Withdraw the question.

10 MR. LEVINE: I will withdraw the question
11 and go through the expert testimony.

12 BY MR. LEVINE:

13 Q. Let me ask you this, let's just turn to
14 another subject for the moment.

15 In paragraph 20, you have a discussion
16 about the company's assertions with respect to operating
17 margins. Could you elaborate on what your views are with
18 respect to the company's arguments about its operating
19 margins?

20 A. The company argues that it needs, at this
21 time needs an operating profit margin of between 4 and 6
22 percent to be viable. And they get there by looking at
23 their peers and concluding that that's what it takes.
24 Based on peer performance they need 4 to 6 percent
25 operating profit.

1 I believe that operating profit, which is
2 earnings before interest and taxes, is not the right
3 metrics to use for valuating financial performance or
4 target performance or threshold performance. I would
5 suggest that the better metric would be EBITDA before
6 legacy expenses, which is earnings before interest taxes,
7 depreciation and amortization and before the portion of
8 retiree pension and medical expenses which is tied to the
9 obligation for those commitments.

10 Q. And why do you believe that's the more
11 appropriate metric?

12 A. That metric measures cash flow that's
13 available.

14 MR. TAMBE: Objection, your Honor. Again,
15 this goes beyond the scope of the expert report and we were
16 not allowed to conduct any examination of this witness.
17 When he said he had prepared a spreadsheet analyzing our
18 performance to peer companies and provided that to the
19 unions, we asked what that did that analyses show and we
20 were cutoff.

21 We were not permitted any inquiry into that
22 matter, and that analysis has not been produced here. It
23 is improper for this man now to be opining from the witness
24 stand to this court to about his opinions in that area.

25 MR. LEVINE: I'm not asking --

1 MR. TAMBE: Fundamentally unfair, your
2 Honor.

3 MR. LEVINE: I disagree respectfully, your
4 Honor. I'm not asking him to compare -- to make any
5 comparison with competitors. I asked him why he believes
6 that the EBITDAR is a better metric, which he specifically
7 stated in his expert report.

8 THE COURT: I'll allow that question.

9 A. The targets drawn by the -- were drawn by
10 the company. I discussed the metric being used. And the
11 reason EBITDAR, and R does not stand for restructuring it
12 stands for retiree related expenses or legacy related
13 expenses, is that's the amount of cash the company
14 generates that is then available to fund capital spending
15 and fund interest, interest on debt obligations as
16 traditionally understood and defined, and debt as not so
17 traditionally defined in terms of the obligation to
18 retirees either for retiree medical benefits which were
19 promised in the past and not funded, and pension expenses,
20 to the extent that they are tied to under funded plans.

21 So the cost of normal service for pensions
22 and retiree medical, I would put into a deduction from
23 EBITDA, but the interest element of that expense I would
24 take out, because that is then available to fund
25 obligations, be they the debt obligations of banks and

1 other credit and other interest bearing securities, or the
2 legacy obligations that have been promised and booked on
3 the company's balance sheet.

4 Q. Turning to page 7 also on the same
5 paragraph there is a series of bullet points. Do you see
6 that?

7 A. Yes.

8 Q. The sentence above that reads, "There are a
9 number of factors that suggest that Dana's performance in
10 2008 will improve as discussed below and perhaps reach the
11 company's own targets in the absence of the union
12 concession sought under its 1113 and 1114 proposals."

13 What, if any, relationship does that
14 statement have with the bullet points have you directly
15 underneath?

16 A. The point I was trying to make is that the
17 company presented to the unions a 2007 plan, and not a five
18 year plan that would incorporate years after 2007. And the
19 issue is long term viability, not the performance in a
20 single year.

21 So I was trying to point out that there are
22 other things going on, other initiatives and other factors
23 that need to be taken into account in order to assess long
24 term viability, and that would be reflected in a longer
25 term business plan, in a real business plan, a five year

1 business plan, a traditional period of time that people
2 look at.

3 And I was just highlighting all the
4 initiatives that the company had identified and whose
5 benefit would not be fully realized in 2007.

6 Q. Without getting any into any specific
7 pricing initiatives that you might be aware of, would you
8 briefly describe how the company's pricing initiatives
9 might be better understood with a longer term picture of
10 the company's projections?

11 MR. TAMBE: Your Honor, I have spoken to
12 Mr. Levine about it, and I just would like to caution the
13 witness that some of the numbers that have been shared with
14 the witness, they have not been publicly disclosed in terms
15 of targets versus achievements, and if he could be cautious
16 about not disclosing specific numbers, I think the witness
17 can answer the question without mentioning specific
18 numbers; the numbers are before your Honor.

19 MR. LEVINE: And I believe my question was
20 designed to do that.

21 Q. And I think, Mr. Potok, do you understand
22 that I said without getting any into any specifics?

23 A. Yes.

24 MR. TAMBE: Thank you.

25 Q. Go ahead.

1 A. The company's target for price increases
2 from customers is larger than the amount budgeted in the
3 2007 plan. The difference are price increases that will be
4 realized in 2008 essentially.

5 Q. And what, if any, observations do you have
6 with respect to the relationship on MFO manufacturing
7 footprint optimization and the lack of forward projections?

8 A. Again, in the case of manufacturing
9 footprint optimization plan, the company's plan would
10 generate more savings over time than is projected for 2007.

11 Q. And on what basis do you make that
12 observation?

13 A. Again, the company's own documents.

14 Q. And with respect to process savings, what
15 are you withdrawn -- how do you believe that process
16 savings should be accounted for with respect to the
17 company's performance over the next few years?

18 A. I note that the company has consistently
19 generated a so-called process savings and any plan for 2008
20 would need to take into account additional savings to be
21 realized that year.

22 Q. And, for the record, what is a process
23 saving?

24 A. It is really a big bucket in which they
25 throw in a lot of stuff, Six, Sigma, Kizon, various

1 programs that the company has undertaken in order to
2 realize savings from operations.

3 Q. You have another bullet point with respect
4 to commercial vehicles. Could you elaborate on that?

5 A. Yes. The commercial vehicles, the company
6 rightly notes, that the 2007 heavy truck industry will
7 suffer substantial decline in 2007, relative to 2006, due
8 to timing of environmental regulations that take effect at
9 the end of 2006, I believe.

10 Looking forward, that too will come back,
11 and the impact on profitability and cash flow needs to be
12 taken into account.

13 Q. Now, in paragraph 21, you draw some
14 conclusions based upon the observations that you've just
15 described, and could you elaborate on those?

16 A. The company is asking the unions to
17 negotiate on the basis of one year's set of projections,
18 not on a longer term basis. The contract is not a one year
19 contract, it is a three to five year contract, and in all
20 likelihood is where the contracts will turn out to be.

21 And just as other constituents in the
22 bankruptcy expect and demand and require longer term
23 projections of the company's performance and will have the
24 time to analyze and digest those projections before they
25 agree to any settlement of their claims. So the union

1 should be in a comparable position in terms of negotiating
2 for the livelihoods of its active members and retirees.

3 Q. Now in paragraph 23 you quote directly from
4 the debtor's motion with respect to customer willingness.
5 Why did you include that in your report? Customer
6 willingness to provide pricing reductions.

7 A. Essentially, again, the company's customers
8 are engaged in a similar exercise, similar due diligence
9 exercise, as we are and as other constituents are involved
10 in, which is to evaluate the long term viability. And they
11 too, you know, will require longer term business plans,
12 will require, you know, a comfort level with viability,
13 just as the union will. And in order for the union to
14 assess viability and what will be required to attain
15 viability, the unions will need a long term plan.

16 Q. I'd like to turn to the next section of
17 your report which relates to information flow, and I'd like
18 to ask you if part of your retention in this proceeding by
19 the two unions included a responsibility on your part to
20 conduct an analysis of the company's books and records?

21 A. Yes.

22 Q. And you do address information flow in your
23 report, so to speak?

24 A. Yes.

25 Q. Information flow?

1 A. Yes.

2 Q. And could you describe in general terms
3 what the relationship is between the exchange of
4 information and collective bargaining?

5 A. In my experience, where parties seek to
6 solve problems, financial problems or any other kinds of
7 problems, they are best able to do that with an
8 understanding of the facts and -- a common understanding of
9 the facts, and a common understanding of where they
10 disagree about the facts, as opposed to one party
11 negotiating based on the facts that it possesses and the
12 other party negotiating based on assertions that are not --
13 it is not in a position to prove or disprove; assertions
14 from the other party.

15 Q. Now, have you read the declaration of --
16 withdrawn. Are you familiar with the company's overall
17 assertion in this case that it has provided adequate
18 information to the unions in connection with collective
19 bargaining?

20 A. I'm aware that the company has made that
21 assertion consistently.

22 Q. Were you in the courtroom on any other day
23 except for today in this proceeding?

24 A. No.

25 Q. So you didn't hear Ms. Tarry testify?

1 A. No.

2 Q. Do you know who Ms. Tarry is?

3 A. Yes.

4 Q. I'll represent to you that Ms. Tarry has
5 advised the court that the unions were provided, in
6 December, with the so-called 2007 base plan.

7 Do you agree with Ms. Tarry?

8 A. Yes.

9 Q. And did that provide any meaningful
10 information to the unions in connection with collective
11 bargaining?

12 A. It's meaningful but not sufficient.

13 Q. Why is that?

14 A. It's an incomplete picture of the company's
15 situation.

16 Q. In what sense?

17 A. Well, the base case is -- that was provided
18 early December to all constituents, provides projections
19 for 2007 before any initiatives are taken into account.
20 And it doesn't -- there's a whole slew of information that
21 we asked for that is not -- that is other than the one year
22 plan.

23 Q. I do intend to ask you about information
24 you requested, but focusing on the 2000 base plan that the
25 unions and other constituents were provided in December,

1 you believe that the base plan didn't adequately provide
2 the unions with information with respect to the
3 relationship -- withdrawn.

4 Does the base plan, or did the base plan
5 allow the unions to see how the company would perform in
6 2007, assuming that the 1113 proposals in existence at that
7 time were effective?

8 A. No, it is before any initiatives.

9 Q. So it's an all things equal sort of
10 analysis?

11 A. It is taking 2006 and projecting forward
12 the from 2006.

13 Q. No changes?

14 A. No changes.

15 Q. Ms. Tarry also pointed out that the unions,
16 and perhaps other constituents, received the 2007 DIP
17 budget plan; is that correct?

18 A. Correct.

19 Q. And how, if at all, was that helpful? And
20 how, if at all, was it not helpful for the unions in
21 connection with their role in collective bargaining?

22 A. One of the missing elements -- we still
23 we're not provided with, for example, what the 1113, 1114
24 initiative or effort would yield under the company's
25 proposal and where it would produce those savings such that

1 we could at least verify what the relationship is between
2 the proposals on paper and financial projections of the
3 savings.

4 Q. So you weren't provided with that
5 information, vis a vis the 2007 DIP budget plan, and you
6 still haven't been provided with such information?

7 A. Well, the company's breakdown of labor cost
8 savings under its 1113, 1114 proposals for the 1113 plants,
9 the active plants, were -- the breakdown was not provided
10 by plant until March 7th or 8th, and that was provided in
11 an Excel document that did not have any of the supporting
12 calculations behind it.

13 It was taking -- it provided the numbers,
14 it didn't provide the assumptions and calculations behind
15 it, and did not include all the savings that the company is
16 seeking. The total of that, of those plans that were
17 provided in March 7th or 8th, was about 45 million dollars
18 under the company's projections, whereas its ask was 63
19 million dollars. So there was no tie-in between what was
20 provided in March by the plant with the total number that's
21 been asserted in various other documents.

22 Q. You were also -- withdrawn. Ms. Tarry also
23 testified that she received the 2006 pro forma. Do you
24 agree with that?

25 A. I don't remember.

1 Q. And how about the DIP bridge supplemental.
2 Did you receive that?

3 A. I'm sure we did.

4 Q. Did you ever get any information about the
5 company's fixed and variable costs?

6 A. It was on a business basis. We asked for
7 it on a plant by plant basis.

8 Q. And why did you ask for it on a plant by
9 plant basis as opposed to an overall business basis?

10 A. We wanted to see what the impact -- it
11 takes us into the MFO analyses, the manufacturing footprint
12 optimization plan. And as part of our mandate we have been
13 looking at alternatives to the company's plans for shutting
14 unionized facilities in the US.

15 And so in order to assess the economics of
16 closing plants and moving work elsewhere, we wanted to see
17 what the economics would begin to -- having margin.

18 Variable cost and fixed cost it's a very useful tool for
19 that sort of analyses, it's a useful set of information.

20 Q. I would like to turn to the information
21 flow process itself in this case. Are you familiar with
22 what's been called the virtual data room?

23 A. Yes.

24 Q. And is there a virtual data room to, your
25 knowledge, with respect to the labor constituencies?

1 A. Yes, there is.

2 Q. And were you given access to that site?

3 A. Yes, I was.

4 Q. And when was that?

5 A. I believe sometime in November.

6 Q. And from whom were you given access?

7 A. It was -- I believe the user word and
8 password came from someone at Jones Day, and the contact
9 was with the operator of the data site, BMC.

10 Q. Was that Mr. Miller?

11 A. I don't remember.

12 Q. But somebody at BMC to your knowledge?

13 A. Perhaps, perhaps Mr. Miller. And from BMC
14 we received from some overview of how to access the
15 information on the data sight and how to use the data site.

16 Q. At that time, were you advised of the
17 existence of any other data sites?

18 A. No.

19 Q. And, by the way, have the unions retained
20 you in connection with their participation on the unsecured
21 creditors' committee in this proceeding?

22 A. I was brought in as a financial advisor in
23 connection with the negotiations. And part of that -- and
24 the restructuring of Dana and the emergence of Dana. So
25 part of that includes working with the union

1 representatives on a committee, to the extent they need
2 financial advisory guidance.

3 Q. And were you advised at any point by anyone
4 from Jones Day or from BMC or Alix Partners about the
5 existence of a UCC site?

6 A. No. Well, at some point I was, but not
7 without making inquiries about it.

8 Q. And were you, at some point, made aware of
9 the existence of a site for professional eyes only?

10 A. Yes.

11 Q. And did you ever attempt to obtain access
12 to documents included in the professional eyes only
13 website?

14 A. Yes.

15 Q. And to whom did you make such a request for
16 access?

17 A. Initially to Chris Bueter, head of HR I
18 believe is his title.

19 Q. And what, if anything, did Mr. Bueter say
20 to you in response or write to you in response?

21 A. At no point did the company ever respond in
22 writing to my requests for access to the data sight for the
23 UCC professionals.

24 Q. Did there come a time when you had a
25 conversation with Ms. Tarry about your desire to have

1 access to that site?

2 A. Yes. I reminded her that that request was
3 outstanding.

4 Q. And what, if anything, did she say to you
5 in response?

6 A. I don't recall, but I think she said there
7 was a confidentiality issue.

8 Q. Are you bound by any confidentiality
9 agreements in this case?

10 A. Yes, I am.

11 Q. And by virtue of being bound by that
12 confidentiality agreement, do you have access to the labor
13 site?

14 A. Yes, I do.

15 Q. And were you told anything about the
16 inapplicability or the insufficiency of that
17 confidentiality obligation on your part which precluded you
18 from having access to the professional eyes only site?

19 A. No. And I didn't -- I assume that Ms.
20 Tarry didn't know either what any possible legal issues
21 that the company's lawyers could have.

22 MR. TAMBE: Objection. Move to strike. No
23 foundation, your Honor.

24 Q. Well, focus on was Ms. Tarry said to you
25 and what you said to her?

1 A. She said to me there was an issue of
2 confidentiality agreement. I reminded her that I was
3 covered by one. She just repeated her statement as to
4 which I said why don't you proceed and have it taken care
5 of so I can get access says to whatever that issue might
6 be.

7 Q. And when was that approximately?

8 A. End of February, beginning of March
9 perhaps; I don't remember exactly.

10 Q. Were you aware of the existence of the site
11 before then?

12 A. I became aware of it around February 22nd,
13 20th time frame.

14 Q. Now, it has been said by some that there
15 are substantial number of documents on the labor site. Do
16 you agree with that?

17 A. Yes.

18 Q. And is quantity important?

19 A. It's not sufficient.

20 Q. Necessary perhaps but not sufficient?

21 A. Well, the quantity didn't say anything to
22 the quality and whether it's complete. There are a lot of
23 documents that are one page excerpts from larger documents
24 or larger documents that are split up into many documents
25 all in one page. So quantitatively there are a lot of

1 files, and put together they are a lot of pages. A lot of
2 those pages are collective bargaining agreements which
3 would run 200, 300, 400 pages, but the sheer quantity of
4 pages or files is not sufficient to know whether or not
5 sufficient information has been shared with the unions.

6 Q. I'd like to return to your declaration and
7 expert report, paragraph 27, which begins on the bottom of
8 page 9?

9 A. Yes.

10 Q. And there you discuss your observations
11 based upon a comparison of documents on the UCC data site
12 and documents of a like kind on the labor site.

13 Could you elaborate on your findings in
14 that respect that are reflected specifically in paragraph
15 27?

16 A. Yes.

17 Q. Please do.

18 A. On the UCC data site there is a file with
19 an Excel file. It's in Excel format, which breaks down
20 employment direct, indirect, union employees and salaried
21 employees by plant, and it's for two months. There are
22 three sheets, one sheet is for the current month, another
23 sheet is for the prior month, and the third sheet is the
24 variance showing the change from one month to the next. It
25 is organized by business unit, and within business unit by

1 geography, and then on a plant by plant basis.

2 In Excel format one can open up the file to
3 see the employment numbers, as I said, direct, indirect,
4 salary, for two months that are covered at any plant
5 worldwide that's operated by Dana. In Excel there is a
6 function called data group which you can group by rows or
7 columns, such that it combines you that you only see one
8 row rather than 47 rows or whatever you are trying to
9 group. So the Excel file is organized that it is grouped
10 by business so you can see the total employees by business,
11 or you could also do it by geography, and you can then open
12 it up to see the detailed information behind it. That was
13 on the UCC site.

14 On the labor site for the unions, someone
15 took the trouble to file print to PDF, namely to take this
16 Excel file and create a PDF file with the summary numbers
17 on it.

18 The difference between the files is one is
19 an absolute number that's on a piece of paper, it's like
20 getting a printout, the other is an Excel where one can
21 manipulate the data and work with it to try to engage
22 trends, and one could get to the level of detail that's
23 simply impossible behind the one page summary because you
24 can't go behind a PDF file, you can't see the underlying
25 data behind it. What you see is what you get.

1 Q. So that the PDF file is a snapshot of the
2 Excel file with the same information?

3 A. Well, the Excel file could have been opened
4 up and printed to a PDF with all the information behind it,
5 but it wasn't; rather all that was provided was the overall
6 summary data. So the difference is, A, the detail wasn't
7 there. And secondly it was in a format that in order to be
8 able to do any analysis on it one would need to enter all
9 the data into an Excel file and then do all the analysis,
10 something that would take, in this case, a long period of
11 time.

12 Q. Now, can you use a PDF file -- you may have
13 answered this, but just so I'm clear. How do you take a
14 PDF file and make it an Excel file?

15 A. You can't.

16 Q. What do you have to do?

17 A. I mean you can, but you would have to put
18 it into a grinder to read, an OCR grinder, let's call it
19 that, which would take the information and read it and
20 convert it into digital format. And then you would have
21 to, if it was a good enough digital reader, do quality
22 checks to make sure it does did it properly, and then you
23 would convert it into an Excel format, but you would never
24 be able to get any of the underlying detail that's behind
25 it.

1 Or in the case of, for example, the wage
2 costing sheets that were provided to us, they were provided
3 in Excel, but within Excel, all the calculations were taken
4 out. Someone went through the trouble of taking the data
5 and doing what's called a copy paste value exercise, such
6 that you've turned formulas into just dead data, dead
7 numbers, without seeing the underlying detail behind it of
8 what numbers are being calculated.

9 So someone went through the trouble of
10 doing that rather than providing us the original Excel with
11 all of the calculations built in.

12 Q. Was that information something that was
13 requested by the union, by you?

14 A. Well, yes. We consistently ask for backup
15 information for the analyses. That means you want to see
16 how its calculated; what are the numbers used for A and B
17 to get to C. So sometimes we just get C and were told
18 there it is. Well, we are looking for the backup to
19 understand what the foundation is.

20 Q. And the backup would be reflected in Excel
21 format and not PDF?

22 A. Correct. I mean one would could write out
23 in PDF to see exactly how that number came about, but
24 that's not the same.

25 Q. Now, I would like to review some documents

1 pertaining to your role with respect to requesting
2 information. And before I do that, do you know who Mr.
3 Shaw is?

4 A. Rick Shaw, yes.

5 Q. Who is Mr. Shaw?

6 A. He's an attorney for Jones Day.

7 Q. And did you work with Mr. Shaw in
8 connection with information requests in this case?

9 A. I've dealt with Rick Shaw, I've dealt with
10 Chris Bueter, and I've dealt with Polar Tarry on
11 information, so he was one of the people who I've dealt
12 with that that on that question.

13 Q. Would you turn please to Tab 105, which is
14 Union Exhibit 22? I think it's the other binder.

15 A. Yes.

16 MR. LEVINE: Behind Tab 105, your Honor.

17 THE COURT: Got it.

18 Q. Mr. Potok, what is this document, if you
19 know?

20 A. It's the initial information request that I
21 forwarded to the company sometime in December actually.

22 Q. And it is dated November 20th, 2006?

23 A. The document reads November 20th at the
24 bottom right hand corner, but in fact it was forwarded in
25 December, I believe, sometime early, mid in December

1 thereabouts.

2 Q. Is there any reason you didn't send it on
3 November 20th when it was prepared?

4 A. On November 20th had I submitted an
5 information request, it would be long and voluminous would
6 be asking for everything. What I thought would make more
7 sense and to expedite the process and to save the company
8 effort and time would be to first review what was on the
9 data site, because I was told the data site would contain
10 information that would be needed to conduct the due
11 diligence on the company.

12 After spending time on the site we had a
13 better sense of what the issues are that we wanted to
14 pursue, and that was a product that we put together here.

15 Q. And did there come a time that you sent
16 what's been marked as Union Exhibit 22 to some -- one or
17 more representatives of the company?

18 A. Yes.

19 Q. And would you turn to Tab 106 of Union
20 Exhibit 23, and could you identify that for the record,
21 please, if you can?

22 A. Yes. That's the cover page of an e-mail
23 from me to Rick Shaw that was -- with it came an
24 attachment, an electronic attachment which was the
25 information request we just look at in the prior exhibit.

1 Q. I see that there's two e-mails on Exhibit
2 23. Could you explain that?

3 A. Yes. I sent --

4 Q. E-mail transmissions, I'm sorry.

5 A. Right. I sent an e-mail indicating that
6 this was a preliminary information request and would be
7 supplemented, and that our -- we were especially interested
8 in getting certain items. And after sending it I realized
9 that there was something I wanted to modify, I don't
10 remember what it was, so I the made the modification and
11 two minutes later I sent him the more final product.

12 Q. Based on this it look like you sent one
13 12:30 on December 17th and -- actually it is two minutes
14 12:28?

15 A. Right.

16 Q. Okay. Turning back to Exhibit 22, the
17 specific request that you made.

18 A. Yes.

19 Q. Let me just review some of these, and not
20 the whole document, but tell us what you requested with
21 respect to paragraphs 5 and 6 and why you requested that
22 information?

23 A. Paragraphs 5 and 6 -- well, paragraph 5
24 refers to an analysis that had been done in businesses and
25 paragraph 6 refers to the manufacturing footprint

1 optimization. It was clear that the company had plans to
2 change the footprint, to put it euphemistically, or more
3 precisely, shut the union plants and move the work to
4 Mexico and other non US non Canadian locations.

5 We wanted to understand the analysis behind
6 those decisions to see whether or not the union, in its
7 negotiations, could propose an alternative and work through
8 with the company whether or not there were any such
9 alternative.

10 Q. And I see in paragraph 8 you're requesting
11 that the base case, something called the AOP and the five
12 year business model with some explanatory information
13 below, presumably to tailor your request; is that correct?

14 A. Correct.

15 Q. And why were you requesting such
16 information inclusive of the five year business model?

17 A. We have learned, our experience is, my
18 experience is that one needs a five year business plan, and
19 companies generally work one year time frame in terms of
20 the budget and the business plan for a longer term time
21 horizon. And we expected that we would want to know what
22 the company's long term plan was for the business to see
23 how profitable the business would be based on what
24 projections, what assumptions and what might or might not
25 be required in the way of modifications and collective

1 bargaining agreements.

2 Q. And did there come a time when you received
3 a copy of the company's five year business plan?

4 A. No, it has not been produced. The timing
5 for receipt has been delayed several times. So at this
6 point I believe it's sometime some April that we are
7 projected, we and other constituents are projected to
8 receive a five year business plan.

9 Q. In your experience in advising unions in
10 regard to financial matters connected to collective
11 bargaining have you worked with five year business models
12 for the purposes of negotiating agreements?

13 A. In my experience, whether it be negotiating
14 collective bargaining agreement or providing equity capital
15 or lending money, one does it on the basis of longer term
16 plans, the five year plan being the typical projection
17 period.

18 Q. So in your opinion was the request for the
19 five year business model connected to a collective
20 bargaining agreement in any way unique?

21 A. We believe that it is essential as a
22 foundation for getting some facts and getting some analyses
23 of those facts so as to be able to in a negotiate.

24 Q. Can you negotiate effectively without such
25 a plan in this kind of a situation where the company is in

1 a fairly radical restructuring posture?

2 A. I think both in terms of negotiating an
3 agreement and in terms of getting that agreement ratified
4 by the people who vote on those agreements, it is essential
5 to have a complete set of four information, and a five year
6 business plan goes a long way towards that.

7 Q. And who are the people who vote on the
8 agreement, who ratify the agreement that you are talking
9 about?

10 A. The union's leadership, be it at the
11 international level or the local level, negotiate
12 agreements, those agreements then have to be approved by
13 the members affected by those agreement, and those are the
14 active employees, and some in some cases the people on
15 layoff as well who get to vote as to whether or not to
16 ratify those agreements and their attitude about ratifying
17 and the company and the union.

18 MR. TAMBE: Objection, I move to strike,
19 your Honor, the testimony. I think the witness is sneaking
20 from behind the privilege curtain.

21 MR. LEVINE: I don't understand the
22 objection.

23 MR. TAMBE: Well, the objection is we were
24 not allowed to ask this gentleman anything that even
25 remotely touched on what you called the so-called

1 negotiations privilege.

2 Now he's giving a rationale of how the
3 unions negotiate and what their understanding is as to what
4 their considerations are. He's not been qualified as an
5 expert on that and I think it's highly improper.

6 THE COURT: I allow the answer to stand and
7 restrict --

8 MR. LEVINE: I will note for the record, I
9 wasn't talking about negotiations. I'm sorry, I'm a labor
10 lawyer. There is a distinction between ratification of
11 labor agreements and --

12 THE COURT: I've ruled, counselor. Let's
13 not have a debate. The answer stands. Go no further.

14 BY MR. LEVINE:

15 Q. Turn to paragraph 10, please?

16 A. Yes.

17 Q. Now, there you ask for information
18 pertaining to the 1113 and 1114 proposals, specifically you
19 ask for detailed analyses of book and cash savings
20 requested from each facility by component and labor group,
21 i.e. wage rate cuts, healthcare changes, overtime policy
22 changes, vacation changes, et cetera. Why did you request
23 that information?

24 A. Fundamentally, the company's asking for
25 cost relief, and so one needs to know how much it is asking

1 for, one also needs to know what it is asking for. And
2 negotiations are about, A, first figuring out how big a
3 basket it needs to be, and then one needs to figure out
4 what the elements of the basket are going to be.

5 So without the cost elements in the
6 company's proposal, how do we weigh how the various
7 elements of the proposal relate to one another in terms of
8 the cost benefits to the company? And in that cost
9 benefits -- whether or not the calculation of 46 million
10 dollars that the company asserts it is asking for is a
11 number that consists of the first year, the second, year,
12 the third year, the average of the three years, do those
13 numbers change over time, which direction do they go in?
14 That all goes into seeing the underlying detail of how the
15 company costs its proposal.

16 Q. And turning to finally paragraph 12, you
17 asked for information about cash repatriation. Why would
18 you ask for that in the context of collective bargaining?

19 A. In one of the meetings with the company
20 there was an assertion that relief was necessary very soon
21 because the company might run out of cash, the debtor might
22 run out of cash without it in the time frame of
23 March/April. And we asked for what the projections were to
24 understand how much cash the company would have, the debtor
25 would have, A, on its own based on the resources it had and

1 the resources that it would use, and to what extent cash
2 outside that's sitting with subsidiaries that are not
3 covered by the bankruptcy protection, to what extent there
4 are resources there that are available to be brought back
5 to support the debtor.

6 Q. By the way, when, if at all, did you
7 receive a response to the information requested in
8 paragraph 10, that is information directly related to the
9 company's proposals in this case in any way responsive?

10 A. It wasn't until -- well, around March 8th,
11 9th time frame. We got documents that show what the
12 savings are for each of the plants. We then asked for a
13 reconciliation of what those numbers add up to for the
14 plants with assertions in Mr. Bueter's declaration and Mr.
15 Stenger's declaration to see how it fit into the larger
16 picture of numbers being banged about.

17 And we didn't get a response to that until
18 the last week, which include -- what we did receive
19 suggests that there were some errors made along the way,
20 that perhaps no one had bothered to do that calculation in
21 the first place, or if they had, they made some errors as
22 well. Some things were counted or mistakenly counted and
23 some things weren't counted, and that's what we have.

24 Q. When did you receive the information about
25 cash repatriation if ever?

1 A. Within the last month, but I don't remember
2 exactly when.

3 MR. LEVINE: Your Honor, at this point I
4 would ask for Union Exhibits 22 and 23 to be received as
5 evidence.

6 MR. TAMBE: No objection, your Honor.

7 THE COURT: Received.

8 (Whereupon, Union's Exhibits 22 and 23 were
9 received in evidence as of this date)

10 BY MR. LEVINE:

11 Q. Turn, please, to Union Exhibit 24 which I
12 believe is behind Tab 107, Mr. Potok?

13 A. Yes.

14 Q. I note for the record that that is a two
15 page exhibit. And beginning from the second page, could
16 you tell the court what this is, if you know?

17 A. This is an e-mail trail, so the oldest
18 e-mail that it's trailing was my December 17th e-mail to
19 Rick Shaw on 12/28.

20 Q. Which for the record was reflected in
21 Exhibit 23?

22 A. Correct.

23 Q. Okay.

24 A. And that's on page 2. On page 1 we see the
25 copy of the e-mail that was sent two minutes later, so that

1 takes us to December 17th at 12:30 a.m. and this e-mail was
2 sent on December 29th.

3 Q. When you say this e-mail, I hate to
4 interrupt you --

5 A. The very top.

6 Q. -- just for the record are you talk about?

7 A. Same exhibit.

8 Q. First page?

9 A. Yes. It is an e-mail dated December 29th
10 to Rick Shaw.

11 Q. And what was the purpose of sending this
12 e-mail to approximately 12 days after the information
13 request was transmitted on the 17th?

14 A. To inform Mr. Shaw that since sending the
15 request there had been absolutely no response from the
16 company, its lawyers, or its restructuring experts
17 indicating that it was received, not received, viewed or
18 not reviewed, whether or not there are questions or issues,
19 absolutely no response.

20 MR. LEVINE: I would ask that Union Exhibit
21 24 be received into evidence, your Honor.

22 MR. TAMBE: No objection your Honor.

23 THE COURT: Received.

24 (Whereupon, Debtor's Exhibit 24 was
25 received in evidence as of this date)

1 BY MR. LEVINE:

2 Q. Turn, please, to Union Exhibit 25 behind
3 Tab 108?

4 A. Yes.

5 Q. Are you there, Mr. Potok?

6 A. Yes.

7 Q. Could you describe to the court what is
8 reflected in Exhibit 25?

9 A. It is a letter dated January 8th from Rick
10 Shaw, and it was sent to me electronically, by fax, and by
11 U.S. Mail.

12 Q. Now is this the first response that you
13 received from the company to your information request sent
14 on December 17th, 2006?

15 A. Yes.

16 Q. And let me ask you to focus on a couple of
17 responses by the company.

18 Could you turn please to page 3, on the
19 bottom with respect to paragraph 6 dealing with
20 manufacturing footprint optimization?

21 A. Yes.

22 Q. Does that indicate that the company was
23 responding to your request for information about MFO
24 adequately?

25 A. Well, item 6 was a request for detailed

1 analyses of the MFO analysis done by the company. For each
2 instance what was provided to us were power point
3 presentations to the creditors from November 10th, October
4 17th, and December 18th.

5 Q. And why was that or was that not adequate
6 from your perspective?

7 A. We were trying to understand the underlying
8 analyses, what the numbers were, what the detail was behind
9 the conclusions.

10 The conclusions were not ones we were
11 pleased to see, but we wanted to understand the analysis
12 behind those conclusions to see, A, whether or not we could
13 understand them and see whether or not we could come up
14 with alternatives, and to see what was done by the company.

15 Q. And that information wasn't contained in
16 these power point presentations?

17 A. No, it's simply conclusions. It presents,
18 you know, it does not provide the underlying analysis
19 behind the conclusions. The numbers used to reach the
20 conclusions.

21 Q. I would like you please now to refer to the
22 response to item 10 of your original information request,
23 which again, for the record, requested basically
24 fundamental information about the 1113 and 1114 proposals.

25 I'll read it onto the record, "You asked on

1 December 17th for detailed analyses of book and cash
2 savings requested from each facility by component and labor
3 group, i.e. wage rate cuts, healthcare changes, overtime,
4 policy changes, vacation changes, et cetera." And on page
5 7 of the company's response, what is reflected as
6 responsive, if at all, to those that fundamental requests
7 by the union on December 17th?

8 A. The response on January 8th, in the January
9 8th letter on page eight was, "We are still considering
10 your request."

11 Q. And that was on January 8th, approximately
12 three weeks after the request was initially made?

13 A. Correct. Now this is the first time
14 the company communicated that it was considering the
15 request. This is apparently it's suggesting that they had
16 been considering it for some period of time.

17 Q. And that was two and a half weeks before
18 the company filed its motion in this case?

19 A. I believe that's the case.

20 MR. LEVINE: Your Honor I would ask that
21 Union Exhibit 25 be received in evidence.

22 MR. TAMBE: No objection, your Honor.

23 THE COURT: Received.

24 (Whereupon, Union Exhibit 25 was received
25 in evidence as of this date)

1 BY MR. LEVINE:

2 Q. One other item on Union Exhibit 25 please
3 turn to paragraph 12. With respect to your request made on
4 December 17th for information relating to cash
5 repatriation, what, if anything, was responsive to that
6 request in this letter?

7 A. The request was to understand whether or
8 not there was any cash available in the non bankrupt
9 subsidiaries that might be able to support the debtor. And
10 the response it is not nonresponsive.

11 Q. Well, it is responsive.

12 A. It does not provide -- well, on the first
13 element, which is A, as to whether or not there are
14 redirections on moving the cash. And the response was that
15 we are considering your request.

16 On the second which is to quantify cash
17 required for operations of non US businesses. And the
18 response was see the plus plan, and when you look at the
19 plus plan it doesn't answer that question, so it is non
20 responsive.

21 Q. Now turn, please, to Tab 109 which is Union
22 Exhibit 26?

23 A. Yes.

24 Q. It appears to be a letter to Mr. Shaw from
25 you dated January 12th, which would have been four days

1 after the company's initial response to your December 17th
2 request for information in connection with the company's
3 1113 proposals. Are you there, Mr. Potok?

4 A. Yes.

5 Q. I just want to go over a couple of -- well,
6 why did you send this letter?

7 A. Because the January 8th response was
8 substantially incomplete to our initial request from
9 December.

10 Q. And how does this letter relate to what you
11 consider to be --

12 A. It identifies all the areas where it is
13 incomplete.

14 Q. And I'd like to focus first on paragraph B,
15 and is that your explanation relating to what you were
16 still waiting for with respect to the company's MFO
17 analyses and projections?

18 A. Yes.

19 Q. What about item G?

20 A. Again, indicating the gap between the
21 question and the answer provided.

22 Q. And what, for the record, do you indicate
23 with respect to your request for information pertaining to
24 the 1113 and 1114 proposals, what do you say?

25 A. My response is, "You respond that we are

1 still considering your request. Please note this
2 information is critical to our analysis."

3 Q. Finally, Mr. Potok, with respect to this
4 document, you have paragraph H relating to cash
5 repatriation. And does that reflect their continuing
6 effort to receive information about cash repatriation?

7 A. Yes.

8 MR. LEVINE: Your Honor, I would ask that
9 Union Exhibit 26 be received into evidence.

10 MR. TAMBE: No objection.

11 THE COURT: Received.

12 (Whereupon, Debtor's Exhibit 26 was
13 received in evidence as of this date).

14 BY MR. LEVINE:

15 Q. Please turn to the document behind Tab 110,
16 Mr. Potok, which has previously been marked as Union
17 Exhibit 27?

18 A. Yes.

19 Q. What is Union Exhibit 27?

20 A. It is a letter from Rick Shaw, which is
21 meant to supplement his prior letter of January 12th.

22 Q. So this is a letter --

23 A. January 8th, I'm sorry.

24 Q. So this is a letter of approximately a week
25 later which is responsive in part I guess to your January

1 12th letter; is it fair to say that?

2 A. No, it is not. It simply supplements the
3 earlier letter that he sent in response to December 17th.
4 As I recall, there's nothing in here that's in any way
5 responsive to the January 12 letter we just reviewed.

6 Q. Is it at all, looking through this
7 documents then to the best of your recollection, was this
8 letter dated January 16th, 2007 which is now one month
9 after the union's initial information request, in any way
10 responsive to your request for basic information pertaining
11 to the company's 1113 and 1114 proposals?

12 A. Well, on January 16th, in this letter, Mr.
13 Shaw doesn't indicate that they are still considering the
14 request, he's just silent on the question as to whether or
15 not they are considering it or decided not to share that
16 analysis with us or anything, it's just silence.

17 Q. And this is two weeks before the motion in
18 this case is filed, correct?

19 A. Correct.

20 Q. Does Mr. Shaw, and for the record, your
21 Honor, I don't mean to refer to Mr. Shaw personally, but
22 does the company's response that's reflected in Union
23 Exhibit 27 refer at all to cash repatriation?

24 A. It supplements the earlier non response in
25 the 12 A previously, the letter from Jones Day said that

1 the company was considering that request, as I recall. In
2 this letter there's a file that's referred to that is meant
3 presumably to be responsive to that question, but in fact
4 it is not.

5 Q. Now, Mr. Potok, I would like to move up a
6 little to the period immediately preceding our coincident
7 with the hearing in this matter.

8 Would you look, please, at Union Exhibit
9 53, which finds itself behind Tab number 129?

10 A. Yes.

11 MR. LEVINE: By the way, your Honor, I
12 would ask that Union Exhibit 27 be received as evidence?

13 MR. TAMBE: No objection.

14 THE COURT: It's received.

15 (Whereupon, Union Exhibit 27 was
16 received in evidence as of this date).

17 MR. LEVINE: And if I didn't ask for Union
18 Exhibit 26 to be received, I would do so now.

19 MR. TAMBE: No objection.

20 THE COURT: Received again.

21 BY MR. LEVINE:

22 Q. Are you at Union Exhibit 53, Mr. Potok

23 A. Yes.

24 Q. Does that appear to be a chain of e-mails
25 between you and representatives of the company?

1 A. Yes.

2 Q. Could you go through that chain and tell us
3 what, if anything, is material to with respect to your
4 request for basic information about the company's 1113 and
5 1114 proposals?

6 A. Okay.

7 Q. It's easier to go chronologically; I think
8 you have to start from the back.

9 A. Yes. The first one is dated February 23rd,
10 and it's an e-mail from me to the company. It's to Chris
11 Bueter, and it's copied to other company officials or
12 company lawyers or advisers. And it notes that the union's
13 chief negotiator forwarded the company's calculations of
14 the 1113 savings that were provided by the company to the
15 negotiator in negotiations, and requests that the same
16 analysis be provided for the UAW plants.

17 Q. When you say chief negotiator, are you
18 talking about Mr. Robinson and the USW, the steel workers?

19 A. Yes. Jim Robinson and the united steel
20 workers.

21 Q. And you were asking for similar information
22 for the united auto workers?

23 A. Yes, correct.

24 Q. And that was information, that was part of
25 item 10 in your original information request?

1 A. Correct. And it requests that such
2 information be provided in Excel format.

3 Q. In Excel?

4 A. In Excel. I believe what was provided --
5 I'm fairly certain was provide to Mr. Robinson was a PDF
6 file.

7 Q. And did you get -- is there a response to
8 your e-mail reflected in this chain of e-mail
9 transmissions?

10 A. Yes, there is.

11 Q. And your e-mail was sent on 2/23. When do
12 you get a response to this e-mail?

13 A. On March 7th.

14 Q. And that's an e-mail transmission from Mr.
15 Bueter to you, Mr. Potok?

16 A. Yes.

17 Q. And that begins with the sentence, "I am
18 sorry I am late with these"?

19 A. Yes.

20 Q. And that is five days before the first day
21 of hearing in this matter?

22 A. Yes.

23 Q. And was Mr. Bueter's response fully
24 responsive to the request that you had made back in
25 December of 2006 for basic and fundamental information

1 connected to the company's 1113 and 1114 proposals?

2 A. No, it was not.

3 Q. Why not?

4 A. Well, on March 8th I sent a followup to Mr.
5 Bueter.

6 Q. Is that the e-mail transmission directly
7 above that?

8 A. Correct. That comes right above it. And
9 some of the questions in that e-mail I note for him, are
10 directed at him, and others are for Alix Partners.

11 Q. And now is the followup that you refer to
12 reflected in Exhibit 54, which is found behind Tab 130?

13 A. Yes.

14 MR. LEVINE: Your Honor, I would move to
15 have Union Exhibit 53 received in evidence.

16 MR. TAMBE: No objection.

17 THE COURT: Received.

18 (Whereupon, Union Exhibit 53 was received
19 in evidence as of this date)

20 BY MR. LEVINE:

21 Q. I would like to focus now on a couple of
22 items in Exhibit 54, which as I understand it from Exhibit
23 53, was transmitted along with your March 8th e-mail to Mr.
24 Bueter; is that correct?

25 A. Correct.

1 Q. And I see here that you have a question
2 number 1 relating to Section 1113 cost savings. What were
3 you looking for as reflected in paragraph 1? Could you
4 explain that?

5 A. There were three numbers that were
6 available that were referring to 1113 savings, and I was
7 asking the company to reconcile it since there was never
8 any schedule tied to any of these.

9 So the first one is in Mr. Bueter's
10 original declaration he estimated the 1113 savings would
11 amount to 48 million 6 dollars -- 695 thousand dollars.

12 In Mr. Stenger's declaration, the annual
13 cost savings with respect to union employee benefits and
14 wages I read at a range of 60 to 90 million dollars. And
15 then the cost sheets provided on March 6th for the UAW and
16 the USW, when we added those up, they added up to 40.8
17 million dollars in the first year, and 44 million dollars
18 in the second year, and 45.6 million dollars in the third
19 year.

20 Q. And so paragraph item 1 you were requesting
21 basically a reconciliation of those numbers?

22 A. Correct.

23 Q. And this was as of March 8th?

24 A. March 8th. We had received the cost sheets
25 for each of the plants on March 7th or 8th, March 6th, I

1 guess. And when we added them up they didn't fit with
2 other data to the company was using?

3 Q. Item 2 includes a number of requests for
4 followup information, information about certain assumption;
5 one of them is a request for information about calculated
6 savings from elimination of LTD, which I take it is long
7 term disability.

8 A. Correct.

9 Q. Tell us about what you were looking for on
10 March 8th with respect to the company's projected savings
11 resulting from the elimination of the long term disability
12 in full?

13 A. I needed to understand how that calculation
14 was derived, how much it was, broken out whatever ways the
15 company could share with me that would explain how they
16 arrived at the number that was in their savings
17 projections.

18 Q. And what, if any, response did you get from
19 your request for some kind of an explanation for the
20 conclusory estimate of savings in the millions of dollars
21 with respect to long term disabilities elimination?

22 A. The savings on long term disability come
23 from two places; one is the active plants, and that amounts
24 to, in cost sheets, to about 2.4 million dollars. Then as
25 we saw in the reconciliations that subsequently came,

1 there's an another 11 million dollars in savings for closed
2 plants.

3 And what we were directed to, for purposes
4 of understanding how those numbers were calculated, as I
5 recall, were in a subsequent communication we were referred
6 to Mr. Arkett's declaration, certain paragraphs in Mr.
7 Arkett's declaration that would explain how the company
8 arrived at these numbers.

9 Q. Let me understand this. You asked
10 questions about company estimates of the savings they
11 expect to achieve from eliminating in full long term
12 disability, and you were referred to litigation documents?

13 A. That was the response, yes.

14 Q. Did you look at those litigation documents?

15 A. Yes, I did.

16 Q. Were they responsive to your fairly basic
17 request?

18 A. No.

19 MR. LEVINE: Your Honor, I would ask that
20 Exhibit 54 be received as evidence.

21 MR. TAMBE: No objection.

22 THE COURT: Received.

23 (Whereupon, Debtor's Exhibit 54 was
24 received in evidence as of this date)

25 BY MR. LEVINE:

1 Q. Turn, please, to Union Exhibit 57 which
2 finds itself behind Tab 133, Mr. Potok?

3 A. Yes.

4 THE COURT: After that I have no more tabs.
5 Is that an indicator?

6 MR. LEVINE: No, your Honor.

7 THE COURT: It's not an indicator?

8 MR. LEVINE: Are you smiling for any
9 particular reason?

10 BY MR. LEVINE:

11 Q. Mr. Potok, could you identify Union Exhibit
12 57?

13 A. It is a letter from me to the lawyer at
14 Jones Day dated --

15 Q. Mr. Welsser?

16 A. Mr. Welsser is the recipient. The letter
17 itself is not dated so I can't tell you when it was sent
18 just by looking at the letter, but it was sent by e-mail,
19 so I'm sure we can track it.

20 Q. Do you know approximately when it was sent?

21 A. It was sent within a day or two of my
22 receiving an e-mail from Mr. Welsser on March 19th.

23 Q. And for what purpose did you send Union
24 Exhibit 57?

25 A. Because the letter from Mr. Welsser was

1 seeking to respond to my earlier letter of March 8th. And
2 to the extent there were still gaps, I wanted to identify
3 them for the company and its advisers so that they could
4 respond back and complete the information request.

5 Q. I'd like you to turn your attention,
6 please, to the bottom of page 1 which deals with the issue
7 of long term disability. Is that what you sent to the
8 company with respect to its recommendation that you read
9 the litigation file in order to obtain information
10 pertinent to the negotiations?

11 A. I could have said in the reference to Mr.
12 Arkett's declaration was nonresponsive; instead I chose to
13 be more specific in this followup request by pointing to
14 discrepancies in numbers on long term disability, hoping
15 that that would perhaps generate the underlying data that
16 would be responsive to my request, so I refer to specific
17 data points that were provided to us by that point.

18 Q. And there did there come a time when you
19 received a response to Union Exhibit 57?

20 A. No, not yet.

21 MR. LEVINE: Your Honor I would ask that
22 Union Exhibit 57 be received as evidence.

23 MR. TAMBE: No objection.

24 THE WITNESS: Actually let me just, I
25 believe one item here. There was a followup e-mail from

1 Ms. Tarry on 2006 -- one of the items here's was asking for
2 the 2006 wage survey of labor costs at each of the plants,
3 and within a day or two of this e-mail I received that from
4 Ms. Tarry.

5 MR. LEVINE: Your Honor, I would also ask
6 that Mr. Potok's declaration and expert report, Union
7 Exhibit 2, be received as evidence.

8 And then my direct examination is complete.

9 MR. TAMBE: No objection, subject to the
10 limitations we that we had made at the beginning of the
11 direct examination.

12 THE COURT: Yes. Both are received, the
13 former and latter request.

14 (Whereupon, Union Exhibits 2 and 57 were
15 received in evidence as of this date).

16 MR. TAMBE: Could we have just five
17 minutes?

18 THE COURT: Yes.

19 (Recess taken.)

20 CROSS EXAMINATION BY MR. TAMBE:

21 Q. Good afternoon, Mr. Potok.

22 A. Good afternoon.

23 Q. My name is Jay Tambe. I'm one of lawyers
24 for the debtors.

25 Let's start with where we ended. If you

1 could turn to Exhibit 57?

2 A. Yes.

3 Q. Do you have it before you?

4 A. Yes.

5 Q. Yes that's the undated letter we were
6 talking about when we ended?

7 A. Correct.

8 Q. And you said it was a couple of days before
9 you got Mr. Welsser's letter, correct?

10 A. Yes, yes, within days; the same week.

11 Q. Would it surprise you if it was actually?

12 THE COURT: Can I catch up with the
13 exhibit? Which one?

14 MR. TAMBE: Exhibit 57.

15 THE COURT: Which tab?

16 MR. LEVINE: It's Tab 13, your Honor.

17 Q. That's the undated letter, right? And
18 that's responding to Mr. Welsser's March 19th letter to
19 you, right?

20 A. Yes.

21 Q. You said on direct, I believe that it was a
22 day or two after you got Mr. Welsser's letter that you sent
23 off this undated letter, correct?

24 A. I think I said I expected it was sent
25 within a day or two.

1 Q. But it was for days wasn't it?

2 A. Yes.

3 Q. It was actually just Friday before we
4 started the hearing?

5 A. That is correct.

6 Q. It was Friday afternoon when you sent it,
7 correct?

8 A. That is correct.

9 Q. And we didn't discuss Mr. Welsser's letter
10 to you, correct? You didn't talk about that?

11 A. No. But in terms of the letter itself,
12 what I did in this letter was -- I initially submitted a
13 letter, he then responded, including all the text in my
14 letter to be able to respond point by point. I then took
15 his letter and added my followup to his response. So all
16 three letters are in fact included in this one letter.

17 Q. And Mr. Welsser, in his letter to you of
18 March 19th, provided additional materials, including
19 spreadsheets, correct?

20 A. Yes, he did.

21 Q. And that was the information you've been
22 looking for, correct?

23 A. You have to be more specific.

24 Q. Some of the information you were looking
25 for, correct? His letter wasn't nonresponsive was it, Mr.

1 Potok?

2 A. It was not nonresponsive, it was responsive
3 in part.

4 Q. He gave you substantial information, did he
5 not?

6 A. He gave me information --

7 MR. LEVINE: Let me just ask --

8 A. And to the extent to which it fell short of
9 my request, my followup indicated it was short and how it
10 was short.

11 MR. LEVINE: Your Honor, I would just ask
12 that the witness be allowed to answer the question.

13 THE COURT: He's doing fine on his own; I
14 don't think he needs your help.

15 MR. LEVINE: Just trying to keep the record
16 clear, your Honor.

17 BY MR. TAMBE:

18 Q. In terms of Exhibit 53, that was another
19 exhibit you talked about, can you turn to that? That was
20 the chain of e-mails.

21 A. Yes.

22 Q. Do you have it?

23 A. Yes.

24 MR. LEVINE: It's Tab 129, your Honor.

25 THE COURT: Got it.

1 Q. And you started talking about your February
2 23rd e-mail, which is at the end of that exhibit?

3 A. Correct.

4 Q. And then you had a conversation with Mr.
5 Matthew about how it took more than a week to get to you?

6 A. It looks like about two weeks.

7 Q. And in fact you commented I'm sorry I'm
8 late with these, and you commented on the phrase that Mr.
9 Bueter used, correct?

10 A. That was the comment; I don't know what my
11 comment was.

12 Q. Well, that was noted in your direct, was it
13 not?

14 A. It was noted in my direct either by me or
15 by my attorney.

16 Q. Could you tell the court where you were on
17 February 26th and 27th?

18 A. Where I was?

19 Q. Yes, where were you?

20 A. Well, I was in Toledo.

21 Q. At Dana?

22 A. At Dana.

23 Q. Getting an in person visit with the highest
24 levels of management, correct?

25 A. Yes.

1 Q. Mr. Burns, correct?

2 A. Correct.

3 Q. The CEO, right?

4 A. We had about 30 minutes with Mr. Burns,
5 yes.

6 Q. And you had two days with heads of products
7 groups, correct?

8 A. Not all heads of product groups. The case
9 of -- our very first meeting was at the beginning of the
10 day, we had a full complement of management for the
11 traction business. By the time we got to structures, we
12 get the controller of the business the sole representative
13 I think, of that business. So it depended which business
14 we were talking about.

15 Q. And you had the opportunity to ask
16 questions, did you not?

17 A. I had an opportunity to ask questions, yes.

18 Q. And you spent some time with Mr. Stenger
19 during those two days, correct?

20 A. Yes.

21 Q. The chief restructuring officer of the
22 company, correct?

23 A. Yes.

24 Q. And he answered your questions, correct?

25 A. I assume to best of his ability.

1 Q. Well, there was no question that you asked
2 that he did not answer, was there, sir?

3 A. There were questions for which there was
4 followup. For example, one of the statements that he made
5 was it was the company's view that productivity in US and
6 Mexico for the labor work were equillivant. And he
7 indicated the that the company's analysis was that Fort
8 Wayne and Mexican facility were about equal, and Cape
9 Gerardo, which is a UAW facility, was lower productivity.
10 And I asked for the backup to you.

11 And I subsequently received a two page
12 power point presentation that was non responsive. So there
13 was questions asked, and there was followup. And we
14 reviewed the followup which in some cases was on point and
15 in some cases was not.

16 Q. You are not saying that your two days at
17 Dana was a waste of time?

18 A. Certainly not.

19 Q. You got a lot of useful information out of
20 those two days, did you not?

21 A. Absolutely. It was about time.

22 Q. Now let's go back to your December 17th
23 request. You said that there was absolutely no response to
24 your December 17th request until January; is that right?

25 A. There was no response to me, there was no

1 response to any member of my firm. There were, I assume,
2 some documents that might have been posted to the website
3 during that timeframe, I would have expected there would
4 be, but there was no response recognizing that a request
5 had been submitted, nor when a response to that a request
6 would be provided.

7 Q. Is that it? Is there anything else you can
8 think of that happened between December 17th and January
9 8th, anything?

10 A. I guess I must be missing something.
11 Please remind me.

12 Q. Yes. I think you are, and you failed to
13 tell the court. On December 20th and 21st what happened on
14 those days?

15 A. On the 20th and 21st the company held
16 informational meetings for professionals and the key
17 constituents during which time it made presentations.
18 And we were provided one or two day's notice for a meeting
19 that was set up presumably well in advance of that,
20 coordinating many people from constituents such as the
21 bondholders' committee, the UCC, at which time there were
22 presentations essentially about the plus plan. Because
23 earlier in the month there was a presentation in New York
24 of the base plan, the 2007 base plan. And then there was a
25 presentation in New York of the plus plan to, I believe, to

1 the unsecured creditors. And this was a follow up to that
2 to provide for the various constituents to get the report
3 at one time.

4 But that was not responsive to our request.
5 That was part of the normal course and process of sharing
6 information and projections with the key constituents.

7 Q. So you you exclude from your information
8 flow anything that's held for consumption of people other
9 than yourself. Is that the answer, sir?

10 A. I submitted a request, a request which was
11 organized into different subjects. There was no indication
12 that that request was received. There was no indication
13 that that request would be responded to. There was a
14 normal course information flow which would have taken place
15 with or without my request. And obviously it was new
16 information. I mean -- well. Okay.

17 Q. It was information you were provided,
18 correct? It was information you were provided in New York.
19 It was information you were provided in Toledo, correct?

20 A. Yes. It was provided to all key
21 constituents, including us.

22 Q. And you had people from your office attend
23 in person the meeting in Toledo, correct?

24 A. Yes.

25 Q. And they were given an opportunity to ask

1 questions at the meeting, correct?

2 A. I take it there was some period of
3 questions.

4 Q. Well, sir, there were no restrictions on
5 asking questions at those meetings, were there, Mr. Potok?

6 A. Only to the extent there were time
7 constraints assigned.

8 Q. Did you know, Mr. Potok, there was time
9 left over each day, plenty of free time?

10 A. Well --

11 Q. Are you suggesting to this court that
12 people were cut off from asking questions?

13 THE COURT: Let him finish the answer.

14 Q. Are you suggesting that people were cut off
15 from asking questions?

16 A. I do not know whether people were cut off.
17 I do not know to what extent questions were asked. I do
18 not know to what extent questions were fully answered and
19 completely answered.

20 Q. And therefore you have no reason to believe
21 that any questions that were asked were not answered,
22 correct?

23 A. Correct.

24 Q. Now you had access to the data site as of
25 sometime in November of 2005, correct?

1 A. Correct.

2 Q. And you mentioned on direct, I believe,
3 that you were retained as an expert sometime in January; is
4 that correct?

5 A. I was retained to be advisor to the unions.
6 At some point I was told there might be a need for me to
7 prepare an expert report. And at some subsequent point I
8 was asked to prepare such a report.

9 Q. But you had been looking --

10 A. The purpose of my retainer was not to
11 generate an expert report. The purpose of my engagement by
12 the unions was to help them in the bankruptcy, to provide
13 my expertise in the bankruptcy to the extent they needed
14 it.

15 Q. You had access to information since
16 November of 2006, correct?

17 A. I had access to the data room since
18 September, November, yes.

19 Q. And there was extended discussion about
20 Excel and PDF files during your direct examination,
21 correct?

22 A. Yes.

23 Q. This wasn't the first time you've seen an
24 Excel file, correct?

25 A. Correct.

1 Q. You are fully familiar with Excel files?

2 A. Yes. Well, I could be a better expert at
3 it, but I'm familiar with it.

4 Q. Well, you mentioned a number of terms of
5 art about Excel files that you are familiar with, correct?

6 A. Yes.

7 Q. Data grouping, and various other things,
8 and hidden formulas, and all the like, right?

9 A. Yes.

10 Q. You know all about that stuff?

11 A. Correct.

12 Q. And this wasn't the first time you were
13 exposed to it, correct?

14 A. Correct.

15 Q. And you knew that when you went on the
16 labor site in November of 2006 when you were looking at a
17 PDF file, you knew it was a PDF file, correct?

18 A. Correct.

19 Q. And between November of 2006 and sometime
20 in February of 2007, did you ever specifically request any
21 of the files that were in PDF to be provided to you in
22 Excel, sir?

23 A. I don't remember.

24 Q. You didn't do so, did you?

25 A. I don't remember.

1 Q. Every time you asked for an Excel file you
2 were provided an Excel file, correct?

3 A. I wouldn't say every time. And, as I
4 indicated, sometimes I was provided with an Excel file, but
5 where the functions of the Excel were -- the values of
6 having the information in Excel were taken out by simply
7 pasting it as -- by taking out the calculations behind it.

8 Q. And then did you ask for someone to give
9 you the more detailed information in the Excel files?

10 A. Every time I asked for backup, that's what
11 I asked for. That's what it means to ask for detailed
12 backup. It means to allow someone to audit the trail that
13 gets to the final number that's presented. That's what it
14 means to ask for detailed backup.

15 Q. And every time you asked for detailed
16 backup specifically, you were given the detailed backup,
17 were you not?

18 A. No, I was not. Absolutely not.

19 Q. Let's talk about a little bit more about
20 the Excel files.

21 You said sometime in February you
22 discovered that there were files on the labor site in PDF
23 that were in Excel on the UCC site; is that correct?

24 A. At the point where I learned there was an
25 UCC data site I went on it and I found information that I

1 thought was useful that was not on the labor site, or was
2 provided in a way that was more useful than what was
3 provided on the labor site.

4 And I picked the example of the employment
5 data to show that rather than the company making an effort
6 to fully disclose and disclose in a way that would be
7 helpful and useful for us, it seemed, and I can just say it
8 seemed, that someone was going out of their way to take
9 what was a useful format of information, namely in Excel,
10 and convert it to something which was much less useful.

11 I observed that. I shared that observation
12 in my declaration.

13 Q. Now, if someone really wanted to keep
14 information from being useful, do you have any explanation
15 as to why that same information on the Excel file was being
16 posted on the UCC site?

17 A. Well --

18 Q. You don't have an explanation, do you, sir?

19 A. Well, one might be skeptical as to whether
20 or not there was an effort to provide the unions with
21 information that would be provided in its useful format as
22 provided to the UCC members. And we don't know what was
23 provided -- in what format information has been provided to
24 UCC professionals, because we still have not gained access
25 to that site.

1 Q. Now, the unions have representatives in the
2 UCC, correct?

3 A. Correct.

4 Q. Mr. Narag Guanatra, he's on the UCC,
5 correct?

6 A. He's a lawyer for the UAW, and he's been on
7 the creditors' committee pretty much all along.

8 Q. And Mr. Jury from the USW is also a member
9 of the UCC, correct?

10 A. He gained membership to the UCC later on in
11 the process.

12 Q. Now, you've described this very convoluted
13 process by which you could take PDF files and put them
14 through an OCR grinder and convert them into Excel files.
15 Do you remember that?

16 A. Yes. I wanted to be very precise. I was
17 asked whether one could turn a PDF into an Excel file. And
18 in fact there is, but no one would do that.

19 Q. You could have called Narag and he would
20 give you the information in Excel, correct, sir? He a had
21 access to the UCC site, did he not?

22 A. My understanding is the user IDs and the
23 passwords for the UCC site and the labor site were
24 provided -- one was provided to Naraj --

25 Q. Answer the question, please?

1 A. I'm trying to answer the question.

2 Q. You could have gotten the information from
3 Mr. Narag Guanatra, could you not, correct?

4 A. Absolutely not, and I'm trying to explain
5 to you why I couldn't.

6 Mr. Naraj Guanatra had access to a site, it
7 turns out to have been the labor site. When he was given a
8 user ID and password, that's what he was given. He never
9 ventured onto the UCC site. He never had -- according to
10 e-mails I received from Mr. Guanatra, he did not know there
11 was a separate site available.

12 Q. You are not suggesting that that site
13 existence was kept from Mr. Guanatra in any way, are you,
14 sir?

15 A. No, I'm not suggesting that, just that he
16 was never made aware that it was available to him. And he
17 assumed that what he was viewing on the labor site was
18 identical to what was being provided to the other
19 constituents on the UCC site.

20 That's an assumption he made. It turns out
21 to have been incorrect.

22 Q. And at any time, if you had simply asked
23 the company for Excel files, you would have gotten Excel
24 files, correct?

25 A. I could have submitted very long, detailed

1 information requests. I was trying to tailor the request
2 to get key information that was essential. And, you
3 know -- and, yes, I could have said give me everything
4 you've given me to date in Excel.

5 Q. That's one sentence, right? Just one
6 sentence your request would have made you receive Excel
7 files as opposed to any other format, correct?

8 MR. LEVINE: Objection, that's --

9 A. That one sentence --

10 THE COURT: That objection is overruled. I
11 was going to interject and ask the same question.

12 A. That could have been a request I would have
13 made, and I believe it would have been a leap of faith.

14 Q. You didn't make the request, did you, sir?

15 A. It would be a leap of faith for me to
16 assume that by asking I would get it. Yes, I could have
17 asked it.

18 THE COURT: You didn't hesitate to ask for
19 a lot of information. Why would you be reticent there?

20 THE WITNESS: I was focused on the bigger
21 picture.

22 Q. Or perhaps a different picture, right, Mr.
23 Potok?

24 A. No.

25 Q. Let's talk about your role. Let's go to

1 your declaration, Exhibit 2?

2 A. (Witness complies.)

3 MR. TAMBE: I'm trying not to put another
4 binder up there so I'm trying to work off the union's
5 binder, but it may be easier for me to just go with the one
6 we have.

7 A. Which one? The declaration.

8 Q. The declaration, yes.

9 MR. LEVINE: It's 10, your Honor.

10 Q. It's your Exhibit Number 2. You have it
11 under a different Tab?

12 MR. LEVINE: I have --

13 THE COURT: It's 2 in your smaller binder.

14 THE WITNESS: Okay.

15 MR. LEVINE: It's two in the smaller
16 binder.

17 Q. Are you there?

18 A. Yes.

19 Q. That's your declaration, correct?

20 A. Correct.

21 Q. And in paragraph 2 of your declaration you
22 state I've been asked for the USW and UAW to provide
23 financial advisory services in these matters, correct?

24 A. Yes.

25 Q. And you don't describe in that paragraph

1 anywhere, do you, sir, that you have a dual role as both
2 expert witness and as a negotiation assistant? Is it's not
3 there is it, sir?

4 A. No.

5 Q. And in the very next sentence you say,
6 "Under the terms of my firm's retention as the union's
7 financial advisor, my firm is paid 50 thousand dollars per
8 month for this engagement." Correct?

9 A. Yes.

10 Q. And that's not all, is it Mr. Potok?
11 There's more, isn't there?

12 A. More what?

13 Q. Well, you have a success fee, don't you,
14 sir?

15 A. Yes, potentially.

16 Q. Yes, you do?

17 A. The potential for a success fee, correct.

18 Q. And that's not written down anywhere?

19 A. Correct.

20 Q. That's your side agreement with the unions,
21 is that right?

22 A. It's a potential for a success fee.

23 Q. What's your definition of success in this
24 matter, sir? Have the unions told you?

25 A. It will be assessed when the case is

1 completed.

2 Q. So it remains to be determined what success
3 means?

4 A. Success means that a company that is
5 reorganized with the unions maximizing employment and labor
6 costs with a viable company.

7 Q. Well, the unions are going to define for
8 you, are they not, sir, what success means?

9 A. Will they define it? They will have to
10 agree. We will have to agree on what success is.

11 Q. And their objectives in this are to
12 maximize employment, correct?

13 A. Maximize employment, maximize retiree
14 benefit recoveries, maximize wages and benefits, maximize
15 job security, and there is no job security without a viable
16 entity. So that's a foundation for all else.

17 Q. You haven't expressed any opinion in your
18 report, and you've offered none on direct, about what it
19 will take for Dana to be a successful, viable company,
20 correct? Yes or no?

21 A. No.

22 Q. You have not offered any opinion about
23 whether Dana has failed to make any necessary capital
24 investments in the past few years, have you, sir?

25 A. No, I have not.

1 Q. No opinion as to that?

2 A. No.

3 Q. You've used no opinion as to whether Dana
4 needs to modernize it's facilities relative to its
5 competitors?

6 A. No, I have not.

7 Q. And you have not opined on what Dana needs
8 to do to be in the correct financial condition to obtain
9 exiting financing, correct?

10 A. I have not done that.

11 Q. And when you have done your analysis in
12 paragraph 20 of your declaration about Dana's so-called
13 ability to reach its targets without any contribution from
14 the unions, you haven't included any new sources of revenue
15 that the company hadn't already told you about, did you?

16 A. No, I have not.

17 Q. And nor have you shared with us your views
18 about your analysis about the company's labor savings under
19 the 1113 proposals at the five plants, correct?

20 A. No, have I not.

21 Q. Now, you've said a few times in your
22 declaration and on your direct that you need a five year
23 plan in order to negotiate, is that right? Got to have it?

24 A. It's pretty standard in these negotiations
25 to have a five year business plan.

1 Q. And how many of the prior CVA negotiations
2 have the unions been provided with a five year plan by
3 Dana, any?

4 A. You mean out of bankruptcy?

5 Q. Out of bankruptcy, yes.

6 A. Generally they are not shared.

7 Q. Generally you negotiate without the benefit
8 of a five year plan, correct?

9 A. Outside of bankruptcy, yes, but it depends
10 on the circumstances. It depends on --

11 Q. You've answered the question, Mr. Potok.
12 Let's talk about the five year plan a little bit more.

13 You assume in your report that Dana is
14 going to achieve a certain level of price improvements with
15 its customers, do you not?

16 A. I simply repeat what management is seeking.

17 Q. And you have no reason to doubt management
18 that management has obtained some price improvements from
19 some customers to date, correct?

20 A. It has reported that it has, yes.

21 Q. And Dana's customers are major OEM
22 companies, are they not?

23 A. Yes.

24 Q. And they have managed to give price
25 concessions to Dana without the benefit of a five year

1 plan, correct?

2 A. I haven't seen the agreements. I don't
3 know the conditions attached to those.

4 Q. In fact, you know very little about Dana's
5 communications with its customers as part of its price
6 improvement initiative, correct?

7 A. Right. The company has insisted on not
8 sharing the granularity of those discussions, and I haven't
9 insisted on getting those because I can get a general sense
10 and I have not pushed on that.

11 Q. But you have assumed for purposes of your
12 analyses, in paragraph 20 of your analyses, that somehow
13 Dana is going to somehow achieve the full benefits of its
14 customer price improvements, correct?

15 A. I have not assumed that it will achieve it,
16 I simply note that under its target, the target is higher
17 than what's being built into in the 2007 base plan plus.

18 Q. Staying with the information sharing in the
19 five year plan, sir, in your meetings with the company in
20 February 26, on February 26th and 27th, you had a detailed
21 discussion about the MFO alternative, correct?

22 A. Actually, there was very little time spent
23 on the MFO on February 26th and 27th, those were Monday and
24 Tuesday of the week. The prior Friday I believe it was, we
25 had a detailed one hour discussion with an Alix Partners

1 professional who walked us through three spreadsheets that
2 we had received a half hour earlier.

3 Q. So you had a detailed discussion on or
4 about February 26th and February 27th about the MFO
5 analyses, right?

6 A. No, it wasn't a detailed discussion. It
7 was a the analyst walking us through the analysis so that
8 we could understand how the spreadsheets that were being
9 shared with us were structured and how to understand what
10 analyses was being done.

11 Q. And you asked for an explanation and you
12 received it, correct?

13 A. We were allotted an hour and a half for
14 someone to walk us through three huge spreadsheets. And
15 for the first time we had a half hour to review before we
16 got on the call. The Alix Partners professionals had
17 another call that same morning and he had got a late, and
18 he had another call afterwards. So we had all of an hour
19 for someone to walk us through that. That's not a detailed
20 discussion, that's someone walking us though the
21 spreadsheets so that we could analyze it.

22 Q. And Alix Partners and Dana did more for you
23 with respect to the MFO analyses, did they not, sir?

24 A. They did.

25 Q. You asked for a specific scenario to be run

1 and they modeled and ran the scenario for you, correct?

2 A. I don't think they ran it. I think they
3 pointed to a version of the one of the scenarios that they
4 had previously run as one to refer to.

5 Q. And that was done for you at your request,
6 correct?

7 A. The spreadsheet that was previously
8 prepared was sent to us, yes. But I would not overstate
9 how much was done for us in the what way of any real de
10 nouveau analysis.

11 Q. Is it the case here that you believe that
12 Dana has a special obligation to provide you with
13 information that it doesn't generate in the ordinary course
14 of business, sir? Is that what you are saying?

15 A. No. I'm not saying --

16 Q. You've answered the question. And yet Dana
17 has, from time to time, conducted analysis at your request
18 and provided you with information, correct?

19 A. They have responded to my request. I don't
20 know how much of it was new on my behalf, I don't know.
21 None of it was labeled as new in response to your request
22 as opposed to here is something we previously did.

23 Q. By the way, the meetings on the 26th and
24 the 27th where you meet Mr. Burns and Mr. Stenger, you were
25 the only folks there, correct, you and your investment

1 partners, correct?

2 A. There were representatives from my firm,
3 from the UAW from, and from a firm called Center Ridge
4 Partners LP, which is also advisor.

5 Q. To the unions?

6 A. Correct.

7 Q. So that was the special two day session
8 just for the unions, correct?

9 A. Yes.

10 Q. Switching gears a little bit, back to your
11 declaration, Exhibit 2?

12 A. Yes.

13 Q. Just confirm for me that you hadn't broken
14 out a separate 1113 analysis from a 1114 necessity analysis
15 anywhere in this declaration, correct?

16 A. Correct.

17 Q. Every time you refer to 1113, you also
18 refer to 1114, correct?

19 A. Correct.

20 Q. That's the way you looked at it 1113 and
21 1114 proposals, correct?

22 A. My clients are negotiating on both motions.

23 Q. Were you in the courtroom when Mr. Miguel
24 Foster testified this morning?

25 A. No, I wasn't.

1 Q. So would you agree or disagree with the
2 statement that the negotiations that are going on with
3 respect to Lima and Pottstown, the plans with the expired
4 agreement, those also touch upon what's going on in the
5 1113 and 1114 process?

6 A. What do you mean by touch upon?

7 Q. Well, would you agree that there is a
8 connection between the 1113 and 1114 proposals and what's
9 being negotiated between the company and the unions with
10 respect to the non 1113 plans?

11 A. Both sets of negotiations are with the same
12 employer. That employer is seeking financial relief.

13 Q. And the unions are looking at that as a
14 connected set of issues, correct?

15 A. They are looking to negotiate a
16 comprehensive labor agreement covering all plants and all
17 issues at one time.

18 Q. But that only makes sense, doesn't it?

19 A. Correct.

20 Q. And that would be the proper way of looking
21 at these issues, correct?

22 A. I believe so.

23 Q. Now let's talk about the plant closers a
24 little bit.

25 Have you been advised, by the way, that in

1 the course of this proceeding the debtors have made quite
2 clear that the active 1113 proposals relate to the plants
3 that have not been sold and not about to be sold off and
4 not the plants that are subject to active collective
5 bargaining discussions for an expired agreement?

6 A. I'm sorry, can you say that again?

7 Q. I'm sorry, I should say that again. That
8 was a horrible question.

9 Are you aware that in the course of this
10 proceeding, that the debtors have made clear that really
11 what we are talking about are the five remaining proposals
12 with respect to the five remaining plants? That's been a
13 subject of a lot of testimony.

14 A. I'll take your word for it.

15 Q. And you have a list of seven plants in your
16 declaration, paragraph 13 of your declaration, correct?

17 A. Correct.

18 Q. In paragraph 15 you discuss Lima and
19 Marion, correct?

20 A. Correct.

21 Q. And you state that debtors have indicated
22 that in a subsequent phase of the manufacturing footprint
23 restructuring, the remaining facility is likely to be shut
24 as well. Do you see that?

25 A. Yes, I do.

1 Q. And you cite a document for that?

2 A. Correct.

3 Q. Do you know what the date of that document
4 was, sir?

5 A. No I do not. I mean I don't remember what
6 it is.

7 Q. Would it surprise you that it was a July
8 2006 document that you were quoting from?

9 A. No.

10 Q. And are you aware that the manufacturing
11 footprint plan has evolved since July 2006?

12 A. I wasn't there in July of 2006 for the
13 company to present to me what the plan was. I know what
14 the plan is right now concretely, the immediate plan.

15 Q. And the concrete plan that's here and
16 immediate does not support your statement, does it, sir?

17 A. The immediate plan is to shut Marion or
18 Lima, that's what the company has asserted. And, if and
19 when asked by members of the two facilities what's the
20 future of our plant if the other one shuts, I would have to
21 be truthful and say it's my judgment, based on what I've
22 reviewed from the company, the other shoe will fall here
23 too.

24 Q. So you are guessing that the other shoe is
25 going to fall?

1 A. I'm not guessing. The July documents refer
2 to phases MFO phases, and the first phase is either Lima or
3 Marion. The company clearly has a view about what it needs
4 to do, which is move work from "high cost North American
5 facilities to Mexico and other low cost countries".

6 When I've made these assertions to the
7 company or Alix Partners, no one has said to me, oh, no,
8 you're wrong. We've changed our minds about the other
9 plant. We are going to keep it. Don't worry about that
10 one.

11 Q. Has the company said in its most recent up
12 to date MFO plan that it intends to shut the other
13 facility. Does it say the say it anywhere in that
14 document, sir?

15 A. The immediate MFO plan is an immediate
16 plan, it is not an intermediate plan.

17 Q. Come now, Mr. Potok. The plan that's in
18 effect right now goes out to 2010, 2011, 2012, doesn't it,
19 sir?

20 A. No.

21 Q. You haven't seen the hockey stick figure
22 showing how the savings from the MFO analyses are going to
23 come on line? You haven't seen that?

24 A. I have seen it. Those are projections for
25 phase one savings. Those aren't projections for phase one,

1 phase two, phase three savings.

2 Q. And does the current plan say anything
3 about closing the other facility down?

4 A. Phase one does not call for shutdown of the
5 other facility.

6 Q. Thank you. Let's go to the next paragraph.

7 A. Yes.

8 Q. Now, here --

9 MR. SIMON: Your Honor, it might make the
10 proceeding somewhat more expeditious if the company would
11 give us firm assurances that the other plant will, in fact,
12 not be shut down rather than playing cat and mouse.

13 I think there are probably folks out in the
14 country who would appreciate knowledge as to --

15 THE COURT: I'm interested in hearing from
16 the witness on the basis of his testimony and how his
17 testimony and his declaration support each other.

18 BY MR. TAMBE:

19 Q. Let's talk about Fort Wayne, Mr. Potok, and
20 only Mr. Potok. You say that it's likely that the wind
21 down at Fort Wayne?

22 THE COURT: And by the way, I think Mr.
23 Levine is doing a fine job of not interrupting.

24 MR. SIMON: So do I, your Honor, but as you
25 know --

1 THE COURT: Sit down, Mr. Simon.

2 MR. SIMON: -- various negotiations are
3 going on, people are listening, questions are being asked,
4 facts are known, they should be put forth. The company
5 knows the facts. Mr. Stenger is in the courtroom, all he
6 has to do is get up equally and appropriately and say don't
7 worry, Mr. Simon --

8 THE COURT: Mr. Simon, this is not a
9 theater. This is question and answer with a witness, and
10 your witnesses have received the same courtesy.

11 MR. LEVINE: I was going to offer, your
12 Honor, a proposed stipulation that one of the two plants
13 would stay open. Perhaps that would be more in accord with
14 the flow.

15 THE COURT: I wouldn't want you to
16 contradict Mr. Simon in any way.

17 MR. LEVINE: They were talking about the
18 closing of one. I'm talking about the second.

19 BY MR. TAMBE:

20 Q. All right. Moving to Fort Wayne, there you
21 say in your second sentence, "It is likely that this wind
22 down is nothing more than a prelude to a complete facility
23 closure." Do you see that?

24 A. Yes.

25 Q. And that's not what the current MFO plan

1 says about Fort Wayne, that it's going to be a shut down or
2 closer of a facility, correct?

3 A. The MFO plan says it's a wind down.

4 Q. To a lower number of employees?

5 A. Well, the projection period it says wind
6 down of 15 percent to 2010 or 2011, which gets us to,
7 according to company documents, to 175 active employees.
8 It does not project beyond that.

9 Q. And in the very next sentence you say, "In
10 fact, the debtor's planning documents indicate that Fort
11 Wayne would have been shut down, would have been shut in
12 the next few years," and it goes on. Do you see that?

13 A. Yes.

14 Q. And so that was something that may have
15 been planned or contemplated earlier in the MFO process,
16 but clearly was not in the plan at the end of the MFO
17 process or where the MFO process currently stands, correct?

18 A. The MFO process shows what the costs and
19 savings would be under the scenario where Fort Wayne would
20 be shut, and the comment in the document say we would shut
21 it but it's too much more us to handle at one time.

22 Q. Therefore we are not it have shutting it?

23 A. Therefore we are not shutting it, at the
24 same time we are shutting the other two plants. So three
25 years the other two plants will have been shut for three

1 years, it won't be a implementation problem to shut Fort
2 Wayne at that point as well, which is what the statement of
3 the planning document says why they didn't shut it down
4 immediately, one reason for not shutting it down
5 immediately.

6 Q. But you think it's likely that it will be
7 shut down?

8 A. Yes, I do.

9 Q. Looking out three years you say under oath
10 that it's likely to be shut down?

11 A. Yes.

12 Q. Next paragraph, 17.

13 A. Yes.

14 Q. Now there you can see that there's no
15 specific plan to shut Henderson down, correct?

16 A. There are planning documents that state
17 that some assumably work will be taken out of Henderson and
18 it will be downsized.

19 Q. So you want to speculate that the company
20 might sometime in the future choose to shut down Henderson,
21 correct?

22 A. It's speculation.

23 Q. So let me get this clear. For purposes of
24 a five year plan, you are not going to make any projections
25 about the future. For purposes of plant closer you want to

1 look three, four, five years down the road and speculate
2 about what the company is going to do. Is that right?

3 A. It's not --

4 Q. Is that right?

5 A. It's not idle speculation, it's based on
6 the company's documents.

7 Q. And then you talk in paragraph 19 about the
8 three remaining facilities that you have not discussed in
9 the prior paragraphs. And there are you said debtors have
10 not provided sufficient information to substantiate their
11 position. Do you see that?

12 A. Correct.

13 Q. You have received, since the date of this
14 declaration, more information about the those three plants,
15 correct?

16 A. Yes.

17 Q. And in fact you ran an analysis of the
18 information you received from Mr. Bueter, correct?

19 A. What do you mean I ran an analysis?

20 Q. You conducted a spreadsheet to check Mr.
21 Bueter's calculations, correct?

22 A. Of the cost savings at the various plants,
23 correct.

24 Q. And you've shared that with the unions,
25 correct?

1 A. Not yet.

2 Q. You haven't shared that with us?

3 A. I just ran it this morning in the last
4 couple days.

5 Q. Do you have your deposition before you? If
6 you don't I can hand it to you.

7 MR. TAMBE: May I approach, your Honor?

8 THE COURT: Yes.

9 Q. Tab B in this binder.

10 A. Yes.

11 Q. Now you gave your deposition on March 9th
12 of this year, correct?

13 A. Correct. I take your word that that's what
14 it was, I don't remember.

15 Q. I want to draw your attention to page 29 of
16 your deposition.

17 A. Yes.

18 Q. And I'm reading from line eight.

19 "Answer. Well, for example, we received
20 two days ago a set of spreadsheets from the company from
21 Chris Bueter purporting to quantify the labor costs, the
22 savings the company would realize in each of the three
23 years under its 1113 proposals. We have taken that
24 information and tried to relate it to other information.
25 We have to see whether or not it makes sense, whether or

1 not, when you add it up it adds up to the cost savings
2 asserted by the company's witnesses, and try to figure out
3 whether or not the arithmetic was correct, to the extent
4 shown, and whether or not the information provided was
5 consistent."

6 Did I read that correctly, sir?

7 A. I believe you did.

8 Q. And then you were asked a question by my
9 partner, Mr. Bennett. And you said there's some
10 spreadsheet that references all of that. Answer yes.

11 Did I read all that correctly?

12 A. Yes.

13 Q. And then you were asked on page 30 what
14 does your analysis show in that regard, on lines 8 and 9.

15 Did I read that correctly?

16 A. That's what the word said.

17 Q. And you didn't answer that question, did
18 you, sir?

19 A. I was instructed not to, I believe.

20 Q. And you followed that instructions,
21 correct?

22 A. Certainly.

23 MR. LEVINE: Your Honor, I would ask that
24 the entire instruction and what I said with respect to the
25 privilege on that day be read into the record.

1 MR. TAMBE: There's no purpose for that,
2 your Honor.

3 THE COURT: I think there's no purpose.
4 He's just stated he was instructed not to answer the
5 question by his counsel.

6 MR. LEVINE: But there was also a
7 discussion about trying to resolve this amicably without
8 the need of court and without springing --

9 THE COURT: No further questions are from
10 him --

11 MR. LEVINE: -- springing the preservation
12 of the a sacred privilege that the union holds during cross
13 examination.

14 THE COURT: I haven't heard a question that
15 would breach that.

16 MR. LEVINE: I respectfully disagree.

17 MR. TAMBE: May I continue, your Honor?

18 THE COURT: Yes.

19 BY MR. TAMBE:

20 Q. Now let's talk about pages 30 and 31. You
21 were asked about another spreadsheet, correct, that you had
22 created, correct?

23 Are you having trouble finding it?

24 A. No, I found it. I was waiting for you to
25 read it.

1 Q. Page 31, line 9.

2 "Q. Other than that spreadsheet
3 analyzing this labor cost information, can you describe any
4 other spreadsheets that Potok and Co. has created?

5 "A. We have been updating analyses and
6 performance for Dana's compared to some peers based on four
7 year results that Dana has reported to date and has been
8 reported by public peers."

9 Did I read that correctly?

10 A. Well, it should say for Dana as compared to
11 some peers.

12 Q. Well, it was a typo in the document. Other
13 than that I read it correct?

14 A. I believe so.

15 Q. And then you were asked the next question.

16 "Q. What does that analysis show?
17 And there was an objection. Do you see
18 that?

19 A. Yes, I do.

20 Q. And then you answer that, and you say it
21 provides a context in which to look at the company's
22 performance relative to its peers as a basis to be able to
23 look at the company's projected performance for '07 and
24 future years, when we get that information, if and when we
25 get that information.

1 Did I read that answer correctly?

2 A. Yes, you did.

3 Q. And the next question you were asked, can
4 you summarize what that contextual information shows? And
5 you didn't answer that question, did you, sir?

6 A. Correct.

7 Q. You do have such a spreadsheet, correct?

8 A. Yes.

9 MR. LEVINE: Your Honor, respectfully, the
10 unions, and I want this on the record, the union, through
11 its counsel --

12 THE COURT: How can it not be on the
13 record?

14 MR. LEVINE: I don't know. I want it to
15 the record.

16 THE COURT: I haven't instructed the
17 reporter not to take anything down.

18 MR. LEVINE: Thank you, your Honor. I
19 appreciate the record being kept open for this because I
20 consider it an important consideration by the court.

21 What we tried to do here, as reflected on
22 these pages is to protect something that fundamental to
23 collective bargaining. Now all of us labor lawyers, all of
24 use us union lawyers to whom come into the court to deal
25 with 1113 and 1114 try as hard as we can to balance core

1 principals underlying the nature labor relations act,
2 principles that have been part of the Federal scheme of
3 labor relations for 75 years now, and we try to balance
4 those principles with the --

5 THE COURT: Mr. Levine, let me just tell
6 you you are overstating the problem. No question has been
7 asked that would breach the confidentiality and the
8 privilege that you are seeking to assert.

9 MR. LEVINE: But what --

10 THE COURT: The only issue is whether these
11 documents exist, whether they were created by the --

12 MR. LEVINE: No, your Honor. What is going
13 on here --

14 THE COURT: Please. I'm listening to the
15 examination and questions, and I'm the guardian of that.
16 And I will not allow him to get any further than he's going
17 just as to the existence.

18 MR. LEVINE: Respectfully, your Honor, the
19 problem is that inferences are being sought to be drawn by
20 counsel to suggest that the union was engaged in hiding
21 information to pollute these proceedings, when all we were
22 doing your Honor when all we were doing is protecting the
23 integrity of the bargaining process. And I am really sorry
24 take respectfully exception to the notion that our efforts
25 to protect that privilege should somehow been used to

1 impeach Mr. Potok, when especially I made it clear right
2 here in the pages that are now being used to impact on the
3 credibility of this witness that I would endeavor to work
4 with Mr. Bennet, to work with Mr. Tambe's partners to
5 ensure that, A, they get the information they needed, and,
6 B, the collective bargaining process was protected. I got
7 nothing between March 9th now except for these my effort to
8 protect that privilege to be used to impeach Mr. Potok and
9 I respectfully suggest to your Honor that it is highly
10 inappropriate.

11 MR. TAMBE: If I may respond your Honor.

12 THE COURT: Sure.

13 MR. TAMBE: This is an issue we flagged
14 your for your Honor yesterday we said the issue is coming
15 up they we have witnesses and this is not a problem of our
16 creation it's their creation. They have taken someone that
17 they want to cloak in privilege but also put him out there
18 as an expert. Now Mr. Potok quite properly said in his
19 deposition I don't have a Chinese wall in my head. I can't
20 separate the two pieces of information. I'm getting a lot
21 of information and using it for two different purposes.
22 And that then leaves us in a quandary because we can't
23 examine the person who is going opine on issues in this
24 case about certain areas when there is a complete mix of
25 information in his head.

1 THE COURT: Mr. Tambe, the only thing going
2 forward in this line of questioning, is that you've asked
3 information as to whether information exists whether this
4 witness has prepared it and the answer is yes. I'm not
5 giving you any opportunity to get into that information, to
6 receive it is or demand it.

7 MR. TAMBE: And I'm not doing so, your
8 Honor.

9 THE COURT: So the arguments in rebuttal
10 are highly overstated, and they go far beyond the issues
11 that are here before me. The integrity of the bargaining
12 process is not an issue at all.

13 This is not theater, Mr. Levine. Please
14 sit down and don't pound the table, because the record
15 should indicate, since it is open, that you have been
16 pounding the table.

17 MR. LEVINE: For the record --

18 THE COURT: Please sit down.

19 BY MR. TAMBE:

20 Q. Let's move on to an area where I think we
21 are going to be in agreement, Mr. Potok. The state of the
22 auto industry.

23 You would admit that it is a very troubled
24 industry as a whole, correct, the entire auto industry?

25 A. The domestic always are in trouble in their

1 key suppliers, many of them are in trouble as well.

2 Q. And there is intense pricing pressure on
3 the domestic OEs correct?

4 A. There is pressure.

5 Q. And they are passing the pressure onto
6 their suppliers like Dana, correct?

7 A. They're trying to, yes.

8 Q. And there's growing competition from
9 overseas companies with respect to the OEs facing
10 competition, correct?

11 A. There is, yes.

12 Q. And there's overseas competition from parts
13 suppliers, correct?

14 A. There is a lots of competition, yes.

15 Q. And you would agree with me, would you not,
16 that the competition from overseas is in two forms, there's
17 parts produced overseas and have come into the US, and then
18 there are transplant companies, non US companies, setting
19 up operations in the US, correct?

20 A. One can't generalize as you'd like. It's
21 parts specific, it's beyond these kinds of broad
22 rationalizations. If you look at axles, for example, the
23 traction business, the key business is still domestic, it's
24 still North American, it's still heavily internal. So the
25 due diligence we've conducted is on a business by business

1 basis for purposes of informing the negotiators about each
2 business about each plant, not with broad generalizations
3 that don't get the negotiators anywhere for purposes of
4 actually negotiating what makes sense for the specific
5 circumstances.

6 Q. And Dana as a whole faces competition from
7 these transplant companies, correct?

8 A. In some markets it has very substantial
9 market shares.

10 Q. Are you saying there's no competition from
11 transplant for Dana, sir?

12 A. Of course there is competition.

13 Q. And it's been growing in the last few
14 years, correct?

15 A. It's been growing for the last 25 years.

16 Q. And you don't see any material change in
17 that over the next few years, do you sir?

18 A. I don't see competition abating any time
19 soon.

20 Q. And you don't see the US auto productions
21 changing very much any time soon, do you, sir.

22 A. What do you mean by that?

23 Q. Let me hand you another binder, sir.

24 MR. TAMBE: Your Honor?

25 THE COURT: I'm going to auction off

1 binders at the end of this hearing.

2 MR. TAMBE: I might be able to take that
3 one back from you, because it's one you've seen before.
4 Just for ease of use, it's the Stenger trial binder.

5 BY MR. TAMBE:

6 Q. In that binder that I just handed you, the
7 Stenger trial binder, if you could turn to Tab 3 of
8 Debtor's Exhibit 216?

9 A. Yes.

10 Q. That's a document prepared by something
11 called the Center for Automotive Research, right, sir?

12 A. Yes.

13 Q. And you believe that to be a reliable
14 source of information, do you not, sir?

15 A. I can't comment, they haven't passed my
16 expertise yet. And I don't know, quite frankly -- they
17 seemed to be a credible organization or you wouldn't pick
18 them, so I'll take your word for it right now.

19 Q. Well, I don't want you to take my word for
20 it, I want the judge to take your word for it. Did you not
21 say in your deposition, page 208, do you have that there?

22 Let me read to you from page 208. Are you
23 there?

24 A. Yes.

25 Q. Starting at the bottoms of page 207 on the

1 same sheet of paper.

2 A. Okay.

3 Q. Again my partner Mr. Bennett is asking a
4 question. Let me show you what we've previously marked as
5 Debtor's Exhibit 216, the one that we've just been talking
6 about.

7 "Q. This one appears to be from
8 something called Center for Automotive Research. Have you
9 heard of that organization?

10 "A. Yes.

11 "Q. Do you consider that to be a
12 reliable source of information about the auto industry.

13 "A. They are viewed as a reliable
14 source."

15 Did I read that correctly?

16 A. Yes.

17 Q. And you have produced no data or analysis
18 in this case that contradicts the information in Exhibit
19 216, have you, sir?

20 A. Correct.

21 Q. So you would agree, would you not, sir,
22 with the data that's provided on page 17 of this exhibit,
23 Exhibit 216?

24 A. Okay.

25 Q. No reason to doubt that that's accurate,

1 correct?

2 A. No.

3 Q. And that shows, "stuck in a plateau" is
4 what it says, new light vehicle sales 92 to 2007, and it
5 shows is roughly horizontal for the past six years. Do you
6 see that?

7 A. Correct.

8 Q. And turn the page to 18, and you have no
9 basis to disagree with the information that's contained on
10 page 18, do you, sir?

11 A. No.

12 Q. And that is production remains steady is
13 what that says, right?

14 A. Correct.

15 Q. And that's talking about US motor vehicle
16 production, correct?

17 A. Correct.

18 Q. And that shows US motor vehicle production
19 stable over a number of years, correct?

20 A. Correct.

21 Q. Going back to 1994?

22 A. Correct.

23 Q. And you don't see any change in that in the
24 near future, do you, sir?

25 A. No. I have no reason to see any

1 difference.

2 Q. If I can turn your attention to page 59 in
3 exhibit 216, this one's entitled supplier table of pain.
4 You see no reason to disagree with the information on that
5 piece of paper, do you, sir?

6 MR. LEVINE: I'm going to object, your
7 Honor, to relevance at this point. What is the issue here,
8 whether there's trouble in the auto industry? Is that what
9 we are trying?

10 MR. TAMBE: What we're talking about is
11 what it's going to take for Dana to get out of this
12 bankruptcy. And this question opined that they the can do
13 it without any savings from labor for the unions.

14 MR. LEVINE: He did not say that.

15 THE COURT: I'll allow it.

16 BY MR. TAMBE:

17 Q. Is IT not your opinion that Dana can get a
18 viable restructuring without any contribution from the
19 unions?

20 A. I don't know yet.

21 Q. You don't know yet, you have no opinion on
22 that topic?

23 A. I would want to see the five year plan, I
24 would want to run due diligence on it to understand what
25 the projections are. I reviewed exhibits there were

1 submitted as part of Mr. Stenger's testimony where he
2 argues that the company must have union concession so as to
3 achieve an EBITDA of 668 million dollars a year, I would
4 question that, whether or not that's a must have number.

5 Q. At this point you are not prepared to offer
6 this court any opinion as to whether or not that's a must
7 have number; is that right?

8 A. I'm not -- I've not -- it would require
9 projections from the company in order to, offhand I do not
10 believe that 668 is a must have number that's been served.

11 Q. You don't have any other number in mind, do
12 you. What's your must have number?

13 THE COURT: Why don't you let him answer
14 the question first.

15 A. I would say the must have, you know, is in
16 the range of a minimum of 450, call it 500. That's without
17 seeing the business plan, without seeing cash flow
18 projections, without seeing a lot of what I would need in
19 order to be able to say yes, you know, confirm that,
20 offhand that seems to be about the right number.

21 Q. And when you say 450 to 500, what are you
22 talking about, the savings that Dana must achieve?

23 A. I'm sorry, I wasn't clear. 450 to 500
24 million dollars of EBITDA earnings.

25 Q. And what kind of a percentage would that

1 translate to, sir, in terms of EBIT percentages?

2 A. No, that's EBITDA.

3 Q. EBITDA percentages, what EBITDA percentages
4 do thing that translates to?

5 A. On a base of 8 billion dollars, that's
6 about 6.2 percent of EBITDA, not EBIT.

7 Q. So in your opinion, well, I'm not sure if
8 you're offering an opinion or not, but the view that you've
9 expressed right now.

10 A. Right. You asked for my view, I shared it
11 with you.

12 Q. So your view is that Dana can successfully
13 reorganize around an EBITDA percentage of 6.2; is that
14 right?

15 A. In the absence of a business plan in the
16 absence of cash flow projections, in the absence of seeing
17 how claims are resolved as between equity and debt and
18 ongoing obligations for things like asbestos and
19 environmental I don't know.

20 Q. I'm not sure how to consider what you've
21 told me so I can plan the rest of my cross examination. Is
22 the 6.2 sort of a target in your mind that Dana should be
23 shooting for in EBITDA?

24 A. It's fact specific. 6.2 in this case would
25 generate 500 million dollars. The company needs about 300

1 million dollars for cap X, that's roughly the run rate.
2 Leave 200 million dollars for overseas taxes that have to
3 be paid, it leaves money for interest on interest expense
4 on debt of foreign subsidiaries, and it leaves the rest for
5 taxes, interest and repayment of debt domestically, so it
6 depends on what level of obligations and what commitments
7 the company makes going forward to see whether or that that
8 will be sufficient. I could see how the 500 gets you
9 there.

10 Q. And you can see how the 500 gets you there
11 because of the analysis you just went through on the stand,
12 or you have a spreadsheet back at home somewhere that
13 you've gone through this analyses?

14 A. I'm running analyses on it, but it would be
15 a lot more meaningful the have it in the context of a five
16 year business plan.

17 Q. The analyses that you've been running, you
18 did present those to the unions, didn't you?

19 A. No, not yet.

20 Q. You made a presentation to the unions on
21 the 1113, 1114 process in which you ran some spreadsheets
22 on that, didn't you?

23 A. What I did is really the equivalent or
24 parallel of what Mr. Stenger did in his exhibit that was
25 just a submitted earlier this week, which is what if -- I

1 took the 2007 plan and I said what if the company gets all
2 the savings it projects past 2007 in 2007, and what happens
3 if it gets all that it has asked for on labor savings, and
4 the number that I came up with was 637 million dollars as
5 compared to 688, but I excluded some things that Mr.
6 Stenger has on his more up to date; but, yes, I ran that.
7 That's not the same as saying this is sufficient or not
8 sufficient.

9 Q. I maybe went off track a little bit here
10 you haven't provided us with a copy of that analysis,
11 right, the union analysis?

12 A. Correct.

13 Q. And I take it if I asked for it I would,
14 get it, correct?

15 MR. LEVINE: I'm not on the witness stand.

16 Q. Sir, would you provide that analysis to me?

17 A. If I'm advised to do so, if I'm asked to do
18 so by counsel I would -- and by my client, I would do so.

19 Q. But short of getting that analysis, with
20 respect to the question that's before the court right now,
21 you can express no opinion about whether Dana needs the
22 1113, 1114 relief it's requesting its motion, correct?

23 A. Well, remember, we still haven't resolved
24 the union's interest in discussing the MFO analysis. Which
25 plants are open? Which ones are shut? What about the

1 union's alternatives that it will present to the company
2 when the company is ready to receive it, and to discuss it
3 and analyze it to see whether or not there are alternatives
4 to what's proposed? Are we talking about three plants,
5 five plants? The 1113, 1114 comes in the context of an
6 overall plan. The unions have significant interest in
7 talking about the MFO analysis as a starting point before
8 you get to who will contribute what?

9 Q. I'm sorry, could you read the question
10 back, because I'm not sure if it was answered.

11 (Record read.)

12 MR. TAMBE: Let me ask you again.

13 Q. You can't offer the court today any opinion
14 on whether Dana needs the 1113 and 1114 relief that it's
15 requesting in its motion, can you, sir? Yes or no?

16 A. I would not be able to give you expert
17 opinion about it, I will give you impressions --

18 Q. The question before the court is can you
19 give the court --

20 MR. LEVINE: Let him answer the question,
21 please.

22 A. No, I will not be able to provide it, will
23 I will need for more information to do so, but I have my
24 impressions.

25 Q. Let's -- before we move further, the

1 percentage that you calculated and shared with the unions,
2 that was an EBITDA percentage of what? The one you talked
3 about?

4 A. I actually didn't do a calculation of the
5 percentage of what's meaningful as the absolute number. I
6 said if we take the company's plan and we assume A, B, C,
7 this is the number we need to get, and it's the number it
8 takes to get there.

9 Q. And what was the number?

10 A. I believe it was 637 million dollars.

11 Q. And that's an EBITDA percentage of what
12 kind of --

13 A. That's a revenue absolute number.

14 Q. And what kind of sales base that you would
15 assume for that?

16 A. Eight billion dollars is a good round
17 number to use.

18 Q. Let someone with a calculator tell me what
19 that is?

20 A. It's 7 and a half percent.

21 Q. Is 7 and a half percent a good target?

22 A. Slightly north of 7 and a half.

23 Q. Is that what Dana should be shooting for to
24 be a viable company on reemergence?

25 A. It should be shooting for a sustainable

1 number to that allows it to invest in plants and meet its
2 obligations over time.

3 Q. And can you give an opinion as to whether
4 or not 7 and a half EBITDA percent is that number, or can
5 you not be give that opinion today?

6 A. It's much more meaningful to look at it in
7 the context of a set of projections about the business than
8 simply pick a number, a percentage, you know, 7 and a half,
9 you know, 637 million dollars in EBITDA would certainly
10 allow the company to invest -- make investments of 300
11 million dollars in cap "X", it would certainly be
12 sufficient to pay taxes overseas of 50 to 75 million
13 dollars, and then you would have the rest of it leftover to
14 fund retiree medical, to fund interest expense and to fund
15 dividends and interest expense and taxes that might be
16 owed.

17 Q. Someone just handed me a slip of paper from
18 a calculator, so it's 7.9 percent is what your number comes
19 out to?

20 A. I was being conservative.

21 Q. If Dana shot for that, you think that's not
22 a bad place to come out of bankruptcy, right?

23 A. As an equity investor I would be very
24 delighted with that number coming out of bankruptcy. But
25 that's on the backs of all these changes, which may not be

1 pleasant for the people being asked to make the
2 contributions.

3 Q. And your view, at least your preliminary
4 view is you need all these changes in order to get to the
5 637 million dollar number, right?

6 A. I was simply doing the arithmetic of what
7 the company's initiatives are and simply adding it. I did
8 not take into account what happens if you assume that, for
9 example, 2007 commercial vehicles are not at a, you know,
10 significantly lower than they have been in recent years,
11 but in fact it covers. It doesn't assume any incremental
12 investments the company makes, it's simply doing the
13 arithmetic to show people what the impact of the company's
14 proposals are.

15 Q. And as a math proposition, getting to 637,
16 in your view, gets this company to a viable reemergence,
17 viable restructure; is that right?

18 A. It was a simple arithmetic exercise, it's
19 not a math exercise, and it guess us to a number which we
20 divide by other number to say what the EBITDA margin would
21 be under this set of assumptions, it doesn't tell us
22 whether it's too little or too much.

23 Q. But whatever the analysis is, that's the
24 one that you presented to the unions, correct?

25 A. I simply showed them what would happen if

1 we took the company's plan and assumed it out, you know,
2 the initiatives are fully implemented, and what the
3 magnitude of savings were that were being asked of the
4 union and its retirees -- the union's active employees,
5 it's members and retired members.

6 Q. You would agree, would you not, sir, that
7 in setting a target EBITDAR percentage or EBIT percentage,
8 you would look to see how the peer companies of Dana were
9 faring, correct?

10 A. That's a useful analysis, you certainly
11 would want to look at it. And if a peer is earning 8
12 percent and paying 3 percent in dividends one would say,
13 well you know, what this company could make five percent
14 and not pay dividends and still be competitive.

15 Q. So peers are relevant or are they not
16 relevant?

17 A. To an extent, it's not the end point, it's
18 a starting point.

19 Q. And you've done such an analysis with peer
20 companies, correct?

21 A. We've reviewed the peers and we've done
22 some that analysis of it, yes.

23 Q. You've identified the peers, correct?

24 A. Some peers, yes.

25 Q. Well, in your deposition you mentioned four

1 peers, actually three peers; American Axel, right, that was
2 one of them?

3 A. Yes.

4 Q. Magna was the other one?

5 A. Yes.

6 Q. And of them and Arbin Meritor was the
7 third, correct?

8 A. Yes.

9 Q. Those were the three peers that you
10 identified in your deposition, correct?

11 A. Yes.

12 Q. Let's turn to tab four in the Stenger trial
13 binder.

14 A. Yes.

15 Q. Mr. Potok, had you spoken to Mr. Stenger
16 before you chose the three peer companies?

17 A. No.

18 Q. Let's go to Tab 4.

19 A. Well, I reviewed what the company submitted
20 in its declarations and analysis.

21 All right, I'm on four.

22 Q. Okay. That's debtor's 50?

23 A. Correct.

24 Q. And you'll see that that's exact Dana
25 comparables companies analyses, correct?

1 A. That's what it's titled.

2 Q. And it's got American Axle in there,
3 correct?

4 A. Correct.

5 Q. And it's got Arvin Meritor in there,
6 correct?

7 A. Correct.

8 Q. And it's got Magna in there, correct?

9 A. Yes.

10 Q. And it's got TRW in there, correct?

11 A. Correct.

12 Q. And adding TRW to the mix lowers the
13 average, it doesn't it, correct?

14 A. No.

15 Q. Look at the averages, sir.

16 A. Which averages?

17 Q. Isn't the EBIT margin percentage for TRW if
18 you look at the five year average 2001 to 2005, it's a 4.5
19 number; do you see that?

20 A. Four point what?

21 Q. Five percent.

22 A. The EBIT margin for TRW is 4.5, yes.

23 Q. And that's lower than the average at the
24 bottom for the four company's EBIT margin of 5.6, correct?

25 A. Correct. But the EBITDA margin is higher

1 than the average excluding data.

2 Q. It's higher by .5 percent?

3 A. It's higher by .5 percent. Well, the 10.2
4 is TRWs, the 9.7 includes TRW, and as compared to the
5 others, as compared to the other three, TRWs EBITDA margin
6 is second to highest behind American Axel.

7 Q. And in your opinion should Dana on
8 emergence be shooting for EBIT margins higher than those of
9 TRW or lower than those of TRW? Do you have a view?

10 A. For what period of time?

11 Q. On emergence; three four upon emergence,
12 what should we be shooting for?

13 A. Again, it depends on what your cash needs
14 are going forward.

15 Q. And you have no opinion then to express
16 that on that subject?

17 A. It would be better informed with a five
18 year business plan. Should it reach for the top? Why
19 shouldn't it reach for Arbin Meritor's.

20 Q. So it should reach for the lowest
21 denominator?

22 A. Well, what I'm saying is there's a range,
23 and one always wants to be best or highest or biggest or
24 whatever, but tell me why the retirees should agree to give
25 up their retiree medical benefits that they worked for 30,

1 35 years so that you could have another point 5 percent
2 margin that might be used to pay dividends? How is that an
3 argument that would be sustainable in a retiree hall?

4 Q. Let me ask you, how about shooting just for
5 the average, for the average of these competitors? What's
6 wrong with that? There's nothing wrong with that, is
7 there, sir?

8 A. Well, why are you including American Axel
9 at 12.32 I would ask? American Axel at 12.3 is based on
10 some very favorable pricing arrangements for the earlier
11 years.

12 Q. Sir, I'm using American Axel for the same
13 reason you use American Axel, that's one of the peer
14 companies, correct?

15 A. That's why I said it's the first step not
16 the last step. You have to look at those margins and see
17 what they mean and what accounts for it.

18 Q. Have you done analysis of the top one
19 hundred tier one auto parts companies and see what kind of
20 average you would get over a five year period for the EBIT
21 margins with those companies?

22 A. Say it again?

23 Q. Top one hundred, tier one auto parts
24 companies?

25 A. No, I have not.

1 Q. Do you know if Mr. Stenger has done that
2 analyses?

3 A. Yes.

4 Q. And that comes out to about 5.6 percent.
5 You don't disagree with that, do you, sir?

6 A. And that's what, EBIT or EBITDA?

7 Q. That's EBIT margin?

8 A. That's what he's testified.

9 Q. And you have no reason to disagree with
10 that, do you, sir?

11 A. No.

12 Q. You do make a point of distinguishing
13 between EBIT margins and EBITDA margins. Let's turn to the
14 next tab in Mr. Stenger's trial binder Tab 5 of debtor's
15 49?

16 A. Debtor's 49?

17 Q. It's Tab 5. It's the next one from the one
18 you are on.

19 A. All right.

20 Q. And you have no reason -- are you there?

21 A. I'm there, yes.

22 Q. And you have no reason to disagree with Mr.
23 Stenger's analysis showing EBIT and EBITDA for the Dana
24 comparables marching in lock step, do you, sir?

25 A. There is a relationship, yes.

1 Q. Thank you. Now, you would agree that the
2 present condition of Dana's US operations is not
3 sustainable, right?

4 A. Currently, no.

5 Q. Losing hundreds of millions of dollars,
6 correct?

7 A. For what period? Let's just agree it's not
8 sustainable without initiatives.

9 Q. Major initiatives?

10 A. Significant initiatives.

11 Q. Not little changes here and there, major
12 comprehensive cost restructuring, correct?

13 A. Major initiatives, yes.

14 Q. And in order to overcome those losses, Dana
15 has to reduce costs, correct? That's one components?

16 A. That's generally one area that's available,
17 yes.

18 Q. And the other area that could be available
19 increase prices, correct?

20 A. That is a secondary, yes.

21 Q. Increased productivity, would that be a
22 third area?

23 A. That would be a third.

24 Q. Any other areas that you can think of that
25 Dana should be tackling to overcome its losses and get on

1 to cap its profitability?

2 A. Well --

3 Q. If you can't think of any, that's fine,
4 we'll move on.

5 MR. LEVINE: Please let him try to answer
6 the question without the cheap shots.

7 A. It could improve on its information
8 systems, for example, it could improve on how it organizes
9 its engineering, it could improve on its relationship with
10 customers, it could improve on its -- well, let's just stop
11 there.

12 Q. Well, improving relationships with the
13 customers means getting more money from the customers?

14 A. No, it means working closely with the
15 customers and communicating with the customers.

16 Q. But just holding hands with the customers
17 isn't going to improve the bottom line, is it, sir? You
18 have to get something from the customers, right?

19 A. Well, you start by gaining their confidence
20 in your ability to do the engineering, in your ability to
21 ramp up production, in your ability to price product
22 components.

23 Q. And where --

24 MR. LEVINE: Your Honor --

25 THE COURT: Let him finish the answer.

1 Q. Are you done?

2 A. And it has to do with, you know, the
3 confidence of customers that you are running a well managed
4 well organized entity without constant shifts in management
5 and constant shifts in direction, and your ability to price
6 product competently.

7 Q. Are you done?

8 A. For now.

9 Q. And can't bank confidence, can you, sir?

10 A. You can bank it.

11 Q. But where does it go on the balance sheet?

12 A. It goes either equity or debt.

13 Q. So you want investment from customers,
14 that's one way to get there?

15 A. No. It shows up with commitments by
16 customers that translates into confidence by investors, it
17 translates into confidence by employees, it translates into
18 confidence by lenders.

19 Q. So when you talk about the confidence of
20 customers, you are talking about orders from customers for
21 business, right?

22 A. Confidence means customers will come to you
23 to solve their problems, they will look to you to solve
24 their problems, and that translates into orders, and that
25 translates into a level of perceptions in the marketplace

1 of how you are perceived in the market by your customers.

2 Q. Perceptions don't pay the bills, you need
3 orders, you need money flowing in the door?

4 A. And that comes from orders, and orders come
5 from perceptions of your ability to deliver.

6 Q. And it would really help the perception of
7 customers if Dana were able to reorganize and exit Chapter
8 11 expeditiously, correct?

9 A. With a plan that worked, yes.

10 Q. And customers, to your knowledge, have been
11 willing to negotiate with Dana and offer price improvements
12 to Dana, correct?

13 A. There have been some pricing concessions by
14 customers, but we are not there in terms of contracts and
15 written documents to get us to the company's targets and
16 long term commitments for orders. Pricing concessions in
17 the short term are helpful, but that's not the same as long
18 term contracts, long term commitments, long term confidence
19 in the supplier being there.

20 Q. Not having spoken to Dana's customers, but
21 you wouldn't disagree with the proposition that Dana's
22 customers, all things being equal, would like to see Dana
23 manage its costs better, correct?

24 A. They would like to see Dana managed better.

25 Q. Any reason to believe that they are not

1 interested in Dana's costs, sir?

2 A. They certainly are interested, that's one
3 component of managing a company well.

4 Q. They would be interested in seeing Dana
5 manage its costs better?

6 A. Yes.

7 Q. Have you read Mr. Stenger's testimony?

8 A. You mean the testimony on Monday?

9 Q. Yes.

10 A. I read a transcript of much of it.

11 Q. Are you aware that Mr. Stenger expresses a
12 view that without significant union concessions Dana is
13 unlikely to get the confidence of its customers for repeat
14 orders, and long term orders?

15 A. Concessions of what kind?

16 Q. Wage cuts, health benefits cuts, other cuts
17 and savings?

18 A. I don't know on what basis he makes that, I
19 don't think -- it's his judgment, and I wouldn't readily
20 agree with it.

21 Q. As far as you know he has been dealing with
22 customers, correct?

23 A. I don't know whether or not he's been
24 dealing directly with customers.

25 Q. But we know you haven't.

1 A. I believe I said that I haven't.

2 Q. So you have no basis to disagree with what
3 Mr. Stenger may have told you?

4 THE COURT: Do you have much more?

5 MR. TAMBE: No, your Honor, we've moving
6 on.

7 MR. LEVINE: Is that an invitation for Mr.
8 Potok to meet with the company's customers?

9 Q. At the end of this whole process you would
10 agree that it's important for Dana to be profitable,
11 correct?

12 A. Yes, and for its customers to have
13 confidence in the company.

14 Q. Are you done?

15 A. I'm done.

16 Q. And not just barely profitable, correct?

17 A. Profitable, sustainable for the long term.

18 Q. You had mentioned a case earlier LTV 1.
19 There was an LTD 2, I assume, correct?

20 A. Yes, there was.

21 Q. We don't want a Dana 2, do we, sir?

22 A. No.

23 Q. We would like to avoid that if possible?

24 A. Yes. And the LTV 2 was not a rare
25 occurrence either, it was an industry which suffered

1 dramatic setbacks, and the company that managed to develop
2 the --

3 Q. I think you've answered the question, Mr.
4 Potok?

5 A. Well, you're drawing the comparison, sir.

6 Q. There's no question pending, Mr. Potok.

7 A. Well, I'm trying to give you a more
8 complete answer than simply yes or no.

9 Q. It was a complete answer. Thank you for
10 that.

11 Let's move on to what the company has
12 proposed as a way to returning the profit on Tab 6?

13 A. Yes.

14 Q. And you've seen that document before,
15 haven't you, Debtor's 35?

16 A. Yes.

17 Q. At that's an outline of the company's
18 restructuring components, correct?

19 A. Correct.

20 Q. And that's the company going around various
21 areas and seeking savings or price improvements, correct?

22 A. Correct.

23 Q. And you would agree that the company should
24 be looking for all of these options to increase its
25 profitability, correct?

1 A. It should be considering all options to
2 generate improved profitability and cash flow.

3 Q. And as far as you know, the customers have
4 given some concessions, correct?

5 A. Correct.

6 Q. And in terms of the footprint optimization,
7 there are some savings expected this year, and more in
8 future years; is that correct?

9 A. That's what the company projects.

10 Q. And there have been savings in SG&A
11 expenses, correct?

12 A. My understanding is yes.

13 Q. And the nonunion employees have had their
14 wages and benefits cut, correct?

15 A. The company has indicated that there have
16 been changes in compensation for nonunion actives.

17 Q. And the retirees, the nonunion retirees
18 have agreed to elimination of the company's obligation to
19 pay their retiree benefits, correct?

20 A. Correct.

21 Q. And the IM, one of the unions, has agreed
22 to eliminate it's OPED liabilities, correct?

23 A. Correct.

24 Q. And those are all important to the
25 company's reorganization?

1 A. They are all elements, true.

2 Q. And would you would agree with me, would
3 you not, sir, that it's also necessary and important for
4 the company to get concessions from its unions, correct?

5 A. Not yet, I'm not there yet.

6 Q. You are not ruling it out, you are just not
7 prepared to say. Yes or no.

8 A. Correct. Not in the absence of judicial
9 information and judicial exploration and discussions about
10 footprints.

11 MR. TAMBE: No further questions. Thank
12 you, Mr. Potok.

13 MR. LEVINE: A few minutes your Honor
14 please.

15 THE COURT: Sure.

16 (Brief recess taken)

17 MR. LEVINE: Your Honor, I just have a few
18 questions. Maybe not even a few.

19 REDIRECT EXAMINATION BY MR. LEVINE:

20 Q. Mr. Potok, Mr. Tambe asked you to make a
21 couple of comments about your knowledge of what happened
22 with a company called LTV. I would like you to tell you
23 what you know about LTV and compare it to what's going on
24 here?

25 A. Okay. LTV 1 is was a bankruptcy that

1 started in 1986, it was completed in 1993. The tail end of
2 that bankruptcy there were 1113, 1114 hearings held in this
3 courthouse. I was part of that process. And unlike the
4 case here, those hearings were held at the end of a long
5 process, a process in which the unions received
6 information, digested information, had the opportunity to
7 review and meet with management and negotiate.

8 The parties negotiated for a period of time
9 until they get got to an impasse, the impasse was
10 essentially whether or not the OPED liability was a labor
11 cost or whether it should be treated as a liability, just
12 as any debt would be treated as a liability. The company
13 insisted on making comparisons of labor costs of LTV versus
14 its competitors, including the legacy cost for OPED and
15 pension. We insisted that those liabilities should be
16 treated as historical obligations and be viewed as debt
17 load rather than as a labor cost.

18 The 1113, 1114 hearing didn't begin until
19 we reached that impasse, until we had a long process
20 involving information sharing and analysis and negotiations
21 such that when the 1113, 1114 hearings were conducted here
22 in New York. At the same time while those negotiations --
23 those hearings were taking place the parties could
24 negotiation to resolve their differences.

25 The case here is a case where there was

1 completely lack of information sufficient for the parties
2 to negotiate, instead the process was highjacked by the
3 professionals for the company with management's consent.
4 Lot's of expenses have been borne by the company pursuing
5 an 1113 prematurely --

6 MR. TAMBE: Objection. It's not
7 responsive.

8 A. The company and the union are really not in
9 a position to negotiate simultaneously --

10 THE COURT: Mr. Potok, I think you should
11 be aware that I'm the presiding judge over LTV 1. And some
12 of what you are relating has no relationship to what was
13 actually going to in that case, which was far more complex
14 than you are what you are describing, had far more
15 involvement with the PBGC, with the defense department, and
16 with other areas that have those complexities spilled all
17 over.

18 I do not see the comparison, and as far as
19 relevance is concerned, I'm going to strike his testimony.

20 MR. SIMON: With all due respect, your
21 Honor, and Mr. Levine --

22 THE COURT: I've made my ruling. You do
23 recall that I was the presiding judge. I have full
24 familiarity with what was going on in the LTV 1.

25 MR. SIMON: I do indeed, your Honor. And

1 if I may, with as much familiarity as you had in that case,
2 as in this case, you are familiar with what went on in the
3 courtroom, you were not fully familiar with what went on in
4 the negotiating process. That is true here. It is true
5 there. Mr. Potok's description of what went on, I would
6 respectfully suggest to you was with respect to aspects of
7 the case that did not come before you because there was
8 there, as here, a litigation tract as well as a negotiation
9 tract.

10 So that while the court is obviously fully
11 aware of what it is aware of, it is not fully aware of what
12 it is not aware of.

13 THE COURT: Exactly so. And you are not
14 fully aware of what the court was aware of, because the
15 court was involved in many other areas.

16 Now what I'm hearing from this witness is
17 pure anecdotal testimony, it's not relevant, and I'm
18 striking.

19 MR. SIMON: It was only --

20 THE COURT: Please sit down.

21 Is there anything else, Mr. Levine?

22 MR. LEVINE: Apparently not, your Honor.

23 No further questions.

24 THE COURT: Thank you, sir.

25 (Witness excused)

1 MR. LEVINE: Your Honor, at this point I
2 would like to defer to my colleagues Mr. David Hock who sat
3 through these proceedings patiently, and he has just asked
4 for about ten minutes to allow for certain electronic
5 equipment to be set up.

6 THE COURT: Sure.

7 MR. LEVINE: Thank you, your Honor.

8 (Recess taken.)

9 THE COURT: Be seated.

10 MR. HOCK: Good afternoon, your Honor.
11 David Hock of Cohen, Weiss and Simon on behalf of the
12 United Auto Workers and steel workers.

13 Can your Honor see the video screen?

14 THE COURT: Yes. Will the reporter swear
15 in Mr. Gibson?

16 H E N R Y G I B S O N, called as a witness, having
17 been first duly sworn by the Notary Public,
18 Denise Nowak, was examined and testified as
19 follows:

20 DIRECT EXAMINATION BY MR. HOCK:

21 Q. Would you please state your name for the
22 record?

23 A. My name is Henry Gibson.

24 Q. And can you give us a little bit of
25 background of when and where you were born?

1 A. I was born in South Carolina, Columbia.

2 Q. And where were you born?

3 A. I was born March 26, 1921. What else you
4 want to know?

5 Q. Did you grow up in South Carolina?

6 A. In South Carolina?

7 Q. Yes.

8 A. Yes.

9 Q. And did you leave South Carolina and when
10 was that?

11 A. Beg pardon?

12 Q. When did you leave South Carolina?

13 A. I left '47 I believe it was, 1947.

14 Q. And why did you leave?

15 A. I came I moved to Detroit to make a living.
16 I wasn't making no money there.

17 Q. And what did you do when you got to
18 Detroit?

19 A. I worked for Dana I was hired at Dana.

20 Q. What year did you start at Dana?

21 A. 47.

22 Q. And what was your first job at Dana?

23 A. Working in the press room.

24 Q. And how long did you work at Dana?

25 A. I worked at Dana somewhere near 35 years.

1 Q. And how many types of positions or jobs did
2 you have at Dana?

3 A. I'm a certified welder, I'm a journey
4 mechanic, I'm a pressure operate, you know, large presses
5 small presses. I did many things.

6 Q. Could you tell the court a little bit about
7 the things you did at Dana?

8 A. Yes. At times when there was no jobs I
9 worked as a janitor helping to clean the floors, from that
10 to working behind the press, taking steel out of the press
11 and stacking it. And they said I did one of the best jobs
12 of any man that they had ever had to stack steel from a
13 press.

14 And the next job I started operating the
15 press and the other guy that were back there was stacking
16 steel. Then from there I hung railing, you know, frames
17 for the Ford chaises. You know what it is? I did that.

18 Q. When did you do that?

19 A. The rail weighed 200 pounds, each one. And
20 I worked there for about four years, and after that I put
21 in for a job of welding on the line, the assembly line
22 where they were putting the frames together and making
23 chaises together for the cars, then I did that.

24 After that, what else did I do? They
25 opened up a welding job, we would frames right on the line.

1 That's where I began to weld, but I was a certified welder
2 before I came to -- Murray Bodies then. And then Dana
3 bought Murray Bodies out. Do you read me clear?

4 Q. Yes, we can hear you.

5 A. And after that I worked out on the dock,
6 taking the rails out, you know, when the job would come to
7 an end and the plant was laying off people we had to switch
8 around and do other odd jobs that we were not hired to do,
9 but I could do all the jobs that they assigned to me to do.

10 And then an opening came in the garage. I
11 was a journeyman mechanic before I came to Detroit, I was a
12 mechanic for the army, U.S. government for large vehicles,
13 small vehicles, motorcycles and you name it, and I was a
14 welder there. And I taught men in the army how to operate
15 machinery, I didn't look like it, but black as I am, I can
16 operate a locomotive, any type of machine mechanically I
17 can operate it except for an airplane, and I don't want
18 that.

19 Q. Mr. Gibson, are you retired now?

20 A. I can't work, both hips is worn out from
21 doing the heavy work at Dana. I had the right hip
22 replaced, the left hip now is on the verge of needing
23 replacement. And while I was working there on the line I
24 developed some type of COPD disease of asthma. And I have
25 to have three vials of medicine to sustain my health, which

1 is Advil, Convex and Unafil, those are the three that I use
2 night and morning. And my eyes, they have gone bad, I have
3 an irreversible glaucoma in the eye. But I was working as
4 a mechanic a battery explode, acid, you know, got in my
5 face and I had many treatments for that at Ford Hospital
6 and someplace out there in Bloomfield Hills, I can't
7 remember it's been so long I forgot where the place were,
8 and they put these lens in there, but my eyes were so dry
9 it wouldn't stay, so they give me some drops. They worked
10 on it and I can see a little bit now. I have 20 glaucoma
11 in my eyes.

12 Q. Mr. Gibson, can you tell us a little bit
13 about what type of retirement benefits you are getting
14 right now in terms of pension and healthcare?

15 A. I tell you lone thing, as far as I can see,
16 and as far as I know, I get somewhere between 600 and maybe
17 a few pennies more. That's all I get from Dana. And see
18 these bills here for my eyes, Dana don't pay anything for
19 office visits. And the prices of these things is
20 tremendous for my eyes, one bottle of medicine about that
21 tall costs 150 dollars a month to put in an eye.

22 Now what else you want to know?

23 Q. Are you on Medicare right now?

24 A. Are you?

25 Q. Are you receiving Medicare right now, Mr.

1 Gibson?

2 A. Yes. That's the only thing paying for
3 that.

4 Q. Is that covered by?

5 A. Dana.

6 Q. I'm sorry, go ahead.

7 A. It's not covering all of it, Dana does not
8 pay office visits and we need -- I don't know why they want
9 to not help us who have poured out our lives for Dana. I
10 have worked 24/7, seven days a week without going home to
11 keep the plants running while my blue eyed white brothers
12 were riding around on their boats on the river with their
13 wife's and I'm out there working like a stupid fool. Do I
14 make myself clear?

15 I did that on account of this man here, Mr.
16 Gerold B. Mitchell, I had had a conversation with him.
17 That was the director of Dana, of Murray Bodies, then Dana
18 took over. Do you know him? You know of him? He retired,
19 and he's the cause of me having the job which I love.

20 Q. Mr. Gibson?

21 A. Yes, sir.

22 Q. Essentially, right now, are you and your
23 wife living on Social Security and your pension?

24 A. Yes, yes, yes.

25 Q. And do you have any extra income that you

1 could use?

2 A. No. Where I going to get it from?

3 Q. I'm just asking you whether you have it?

4 A. What did he say?

5 A VOICE: He said he was asking whether you
6 had it.

7 THE WITNESS: Hum.

8 A VOICE: He was asking whether you had any
9 extra income or not.

10 BY MR. HOCK

11 Q. Just one more question. Do you think it's
12 fair and equitable that Dana should eliminate their retiree
13 benefits?

14 A. I don't think they should. What in the
15 word are people going to live of? We can't hardly pay to
16 get food, more or less paying our healthcare, and they want
17 us to pay extra money to maintain Blue Cross, not Blue
18 Cross, Medicare they going up on that so they tell me, I
19 don't know.

20 MR. HOCK: Thank you, Mr. Gibson. I have
21 no further questions.

22 THE WITNESS: Beg your pardon?

23 MR. HOCK: Thank you, Mr. Gibson. I have
24 no further questions at this time.

25 THE WITNESS: Thank you. I hope I helped

1 you, and I hope you helped me.

2 Thank you. Are we ready to go?

3 A VOICE: No.

4 MR. TAMBE: No cross.

5 MR. SIMON: Oh, come on.

6 THE COURT: Thank you, sir.

7 MR. LEVINE: We're finished, thank you.

8 MR. HOCK: We're finished with the video.

9 Would you like us to turn this off at this
10 point?

11 THE COURT: Yes, I think it might be a
12 distraction for everybody else.

13 MR. HOCK: All right.

14 I'd like to call our next witness.

15 Craig Zuber, could you please come up to
16 the witness stand?

17 C R A I G Z U B E R, called as a witness, having
18 been first duly sworn by the Notary Public,
19 Denise Nowak, was examined and testified as
20 follows:

21 THE HOCK: May I proceed?

22 THE COURT: Sure.

23 DIRECT EXAMINATION BY MR. HOCK:

24 Q. Could you please state your name for the
25 record?

1 A. Craig Zuber.

2 Q. And where do you live?

3 A. Centerport, PA.

4 Q. Is that near Reading, Pennsylvania?

5 A. Yes.

6 Q. How long have you lived in the Reading,
7 Pennsylvania area?

8 A. I lived there all my life.

9 Q. And would when did you take your first job
10 at Dana?

11 A. I think it was when I was 19.

12 Q. What year was that?

13 A. In 1965.

14 Q. Could you please tell us were about your
15 first job at Dana?

16 A. Well, we were trained to be welders on the
17 line on the Chevy line, basically what that guy said there
18 assembling of frames, welding, I did that for like ten
19 years. And then the layoffs came, you know, we were laid
20 off a long time. But you were back and forth on the
21 presses or you were cleaning or doing something there, you
22 did all kind of jobs.

23 They ended up with heavy truck and I
24 finally got a steady job over there, and as my seniority
25 going up I kept working steady. So the heavy truck was

1 where I stayed and retired.

2 Q. Could you describe the exact type of work
3 you were doing in the heavy truck department?

4 A. It depends which department you were in at
5 the time. Sometimes you were welding, grinding them,
6 straightening them, turning them with turning bars; they
7 weighed anywhere from 3 to 15 hundred pounds, cement trucks
8 were pretty heavy. Sometimes you stacked them by hand,
9 maybe when I had 25 years, then they started getting
10 automation in the shop where it would be a magnet to pick
11 them up instead of you handling them manually. It was a
12 combination of everything there.

13 Q. Was this a 9 to 5 job?

14 A. 7 to 3 for me; it was usually 3 to 3 we
15 usually worked.

16 Q. So you were working 12 hour days?

17 A. Or seven days when the company needed us.

18 Q. And when did you require?

19 A. 1995.

20 Q. And how old were you at that point?

21 A. 49, I just turned 49.

22 Q. Why did you decide to require at that
23 point?

24 A. In '88 I had two back operations. I still
25 have problems with my back. Took a job in department 22

1 welding, grinding, which didn't do much lifting. The next
2 operation, even though I was having problems, they told me
3 they were going to fuse me, so I didn't want to take the
4 chance of being fused and they had the 30 and out and I
5 left.

6 Q. Are you eligible for Medicare?

7 A. No.

8 Q. Are you married?

9 A. Yes.

10 Q. And does your wife have any medical
11 conditions?

12 A. 16 months ago she fell at work and can't
13 get her hand back, probably they will never get it back or
14 her arm. They just sent her back doing a one handed job.
15 I got the last 16 month driving a school van, which I did
16 for the last couple of years to supplement my income.
17 Between taking care of her and driving the school van I was
18 driving 250 miles a day. It just got too much and I could
19 feel my leg going numb again. I drove autistic children.
20 I'm responsible for them, and before I had seen any of them
21 kids get hurt I had to give up the job.

22 Q. You said your wife is back at work now?

23 A. Yes.

24 Q. Does she get benefits?

25 A. They are paying her 20, 25 hours a week.

1 It was only part time for the schools, it's like a Berks
2 County intermediate unit, but it's part time, okay, it's
3 the school year. The school year consists of 180 days a
4 year even though you work ten months out of the year maybe,
5 but you have all that time off in-between Christmas
6 holiday, and you don't get paid for none of that; in
7 service days, Thanksgiving, Easter, just all the days you
8 don't get paid for, it's just a part time job.

9 Q. What other income do you have?

10 A. None.

11 Q. Do you have a pension?

12 A. Have I a pension from Dana.

13 Q. How much is that?

14 A. Total?

15 Q. Yes, total.

16 A. 14 hundred 63, I think, clear.

17 Q. So between that and your wife's salary is
18 all that you have to live on?

19 A. Yeah.

20 Q. And have you looked into whether or not you
21 could buy health insurance if Dana were to cut your
22 benefits?

23 A. We've been looking for -- me and my wife
24 are probably looking at 12 hundred dollars a month or more,
25 I can't afford that.

1 Q. While you were working at Dana were you
2 able to build up enough savings to be able to pay for
3 insurance until you turn 65 and become eligible for
4 Medicare?

5 A. I saved some money, okay. I know since
6 this startled, the bankruptcy, I haven't touched my house I
7 haven't done anything, you know, I need a lot of repairs
8 and now I'm afraid to do anything, I don't know what's
9 going to happen here, you know. So, if I got to pay that
10 insurance, I don't even know if I can make it until we're
11 on Medicare, both of us. I'm 60 years old.

12 Q. While you were working at Dana and when you
13 retired did the company promise that you would have retiree
14 health benefits?

15 A. Yes, they did.

16 Q. And how do you feel about Dana's proposal
17 to eliminate retiree benefits? Do you think it's fair?

18 A. We had a lot of hard workers in Dana in the
19 Reading plants, good people built that plant. I just can't
20 see why even thinking of taking it away from us. You know,
21 not the way we -- where am I going to get a job? Two back
22 operations I'm 60 years old. I quit school, I can't run a
23 computer, you know. What am I going to do? Even now I'm
24 looking for a job, you know, trying to supplement my income
25 or whatever, but it's got to be something that they want to

1 hire me and then am I able to do it. That's the things
2 that I face. But let me tell you, when you go for a job at
3 60 they don't want you.

4 MR. HOCK: Thank you very much. I have no
5 further questions.

6 MR. TAMBE: Thank no cross, your Honor.

7 THE COURT: Thank you.

8 THE WITNESS: Thank you, your Honor.

9 MR. HOCK: That was our last witness.

10 THE COURT: I thank you all. I'll see you
11 on Tuesday morning.

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1 March 29, 2007

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I N D E X

4

5 WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

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7 SUZANNE TARANTO

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36

101

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MIGUEL FOSTER

104

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LEON A. POTOK

125

185

256

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HENRY GIBSON

261

(video conference)

11

CRAIG ZUBER

268

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14

E X H I B I T S

15

16

UNION'S

RECEIVED IN EVIDENCE

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26	174
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53	179
54	182
2	185
57	185

C E R T I F I C A T E

STATE OF NEW YORK }
 } ss.:
COUNTY OF WESTCHESTER }

I, Denise Nowak, a Shorthand Reporter and
Notary Public within and for the State of New
York, do hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not related,
by blood or marriage, to any of the parties in
this matter and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this _____ day of _____, 2007.

DENISE NOWAK

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